

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

DELANO H. WEBB, III, M.D.

Appellant

v.

STATE MEDICAL BOARD OF
OHIO

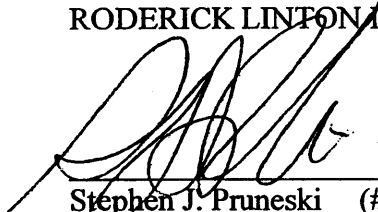
Appellee

CASE NO. 02CVF-10-12121

VOLUNTARY DISMISSAL

Pursuant to Civil Rule 41(A) (1), Appellant dismisses this action without prejudice at
Appellant's cost.

RODERICK LINTON LLP



Stephen J. Pruneski (#0030333)
Attorney for Appellant
1500 One Cascade Plaza
Akron, OH 44308
(330) 434-3000
(330) 434-9220 (fax)
spruneski@rodericklinton.com

CERTIFICATE OF SERVICE

A copy of the foregoing was sent by regular U.S. mail to the State Medical Board of Ohio, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0315 and Hanz R. Wassererbürger, Assistant Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Fl., Columbus, Ohio 43215-3428, this 15 day of January, 2003.


Stephen J. Pruneski (#0030333)

1/15/03/bkr
sjp/webb/voluntary dismissal

STATE MEDICAL BOARD
OF OHIO

2002 NOV -8 P 2:07

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

DELANO H. WEBB, III, M.D.

Appellant

v.

STATE MEDICAL BOARD OF
OHIO

Respondent

CASE NO.

NOTICE OF APPEAL

02 CVF 10 1212

Notice is given that Delano H. Webb, III, M.D. appeals to the Court of Common Pleas from the Order of the State Medical Board of Ohio revoking the certificate of Delano H. Webb, III, M.D. to practice medicine and surgery in the State of Ohio on October 16, 2002. A copy of the Final Order is attached as Exhibit "A". A copy of an explanatory letter dated October 24, 2002 is attached as Exhibit "B".

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2002 OCT 31 PM 2:30
CLERK OF COURTS-CV

The grounds for appeal are as follows:

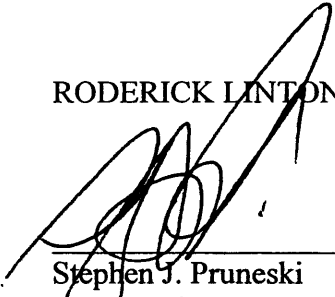
- 1) Revocation of Dr. Webb's medical license pursuant to Ohio Revised Code 2: 08

Section 4731.22(A) was not supported by reliable, probative and substantial evidence. There were no findings of fact that Dr. Webb intended to deceive the State Medical Board of Ohio when he submitted his application for renewal of his medical license in 1994, 1996 and 1999. The Board cannot ignore the Hearing Examiner's finding of no intent to deceive.

2) Revocation of Dr. Webb's medical license pursuant to Ohio Revised Code Section 4731.22(B)(5) was not supported by reliable, probative and substantial evidence. There were no findings of fact that Dr. Webb made a publication with the intent to deceive the State Medical Board of Ohio when he submitted his application for renewal of his medical license in 1994, 1996 and 1999.

3) The Board failed to account for suspension already served by Dr. Webb when the Board issued its original Order in April, 2000 which was ultimately overturned by the 10th District Court of Appeals.

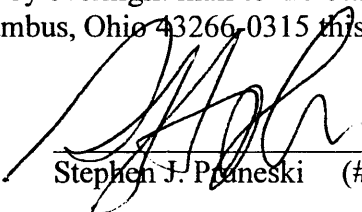
RODERICK LINTON LLP



Stephen J. Pruneski (#0030333)
Attorney for Appellant
1500 One Cascade Plaza
Akron, OH 44308
(330) 434-3000
(330) 434-9220 (fax)
spruneski@rodericklinton.com

CERTIFICATE OF SERVICE

A copy of the foregoing was sent by overnight mail to the State Medical Board of Ohio, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0315 this 30th day of October, 2002.



Stephen J. Praneski (#0030333)

STATE MEDICAL BOARD
OF OHIO
2002 NOV -8 P 2:08



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

October 24, 2002

Stephen J. Pruneski, Esq.
Roderick Linton, LLP
Fifteenth Floor
One Cascade Plaza
Akron, OH 44308-1108

STATE MEDICAL BOARD
OF OHIO
2002 NOV - 8 P 2:08

Dear Mr. Pruneski:

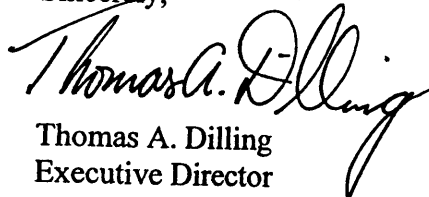
I have received your letter of October 17, 2002, concerning the Medical Board's October 9, 2002, order suspending the medical license of Deleno H. Webb, III, M.D.

As indicated in your letter, the Board did not take into account any suspension time that Dr. Webb may have served following the Board's original Order of April 5, 2000. Nonetheless, it is my understanding that Dr. Webb served a period of suspension from the original Order of April 5, 2000, until a stay was granted by the Franklin County Court of Common Pleas on July 12, 2000, and again from the court's decision affirming the Board on March 16, 2001, through November 29, 2001, when the Order was overturned by the Court of Appeals. The total time that Dr. Webb served exceeds the period of suspension ordered by the Board on September 11, 2002, and therefore will be considered time served, in satisfaction of the most recent Order. Accordingly, the probation imposed by the Board's Order of September 11, 2002, is considered to have commenced on October 11, 2002, when the Board's corrected Order was mailed.

As Dr. Webb's license expired during the term of suspension and is currently inactive, I am enclosing a renewal card with Dr. Webb's copy of this letter so that he may renew his license. The fee for renewal is \$305. The renewal card, along with the fee, should be returned to the Board offices at the address listed above.

I trust that this letter will clarify the Board's position in this matter. Should you have any further questions, please do not hesitate to contact me.

Sincerely,


Thomas A. Dilling
Executive Director

Cc: Deleno H. Webb, III, M.D. (with enclosures)

BEFORE THE STATE MEDICAL BOARD OF OHIO

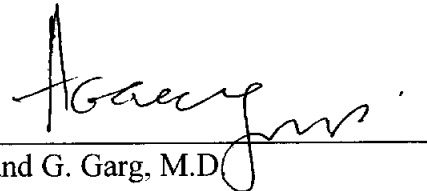
IN THE MATTER OF :

DELENO H. WEBB, III, M.D. :

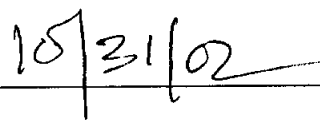
ENTRY

This matter was the subject of an Entry of Order on April 19, 2001, pursuant to the direction of the Franklin County Court of Common Pleas on March 16, 2001. Subsequently, it was determined that the Board's Entry of Order was in fact premature, as Dr. Webb's time to appeal the Court's ruling had not yet run. Accordingly, the Medical Board's Order of April 19, 2001, must be and is hereby VACATED.

So ORDERED this 31st day of October 2002.


Anand G. Garg, M.D.
Secretary

(SEAL)


Date



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

October 9, 2002

Deleno H. Webb, III, M.D.
1326 6th Avenue
Huntington, WV 25701

Dear Doctor Webb:

Please find enclosed a certified copy of the CORRECTED Order and Entry in the above matter approved and confirmed by the State Medical Board of Ohio meeting in regular session on September 11, 2002. This Order and Entry documents the Medical Board's reconsideration of your case in accordance with the instruction of the Tenth District Court of Appeals.

Section 119.12, Ohio Revised Code, may, but does not necessarily, authorize an appeal from this Order. Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Anand G. Garg, M.D.
Secretary

AGG:bar
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 2906
RETURN RECEIPT REQUESTED

Cc: David S. Nichol, Esq.

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 2890
RETURN RECEIPT REQUESTED

Mailed 10/16/02

In the Matter of Deleno H. Webb, III, M.D.
Page 2

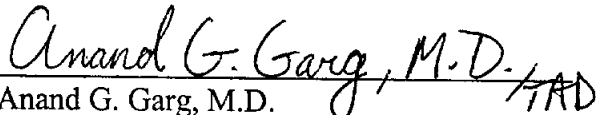
Second mailing: CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3314
RETURN RECEIPT REQUESTED

David S. Nichol, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3307
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the October 9, 2002, CORRECTED Order and Entry of the State Medical Board of Ohio in the Matter of Deleno H. Webb, III, M.D.; and attached excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 11, 2002, including a Motion approving and amending the Findings of Fact, amending the Conclusions of Law, and adopting an amended Order, constitute a true and complete copy of the CORRECTED Order and Entry of the State Medical Board in the Matter of Deleno H. Webb, III, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.


Anand G. Garg, M.D.
Secretary

(SEAL)

October 9, 2002
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

DELENO H. WEBB, III, M.D.

*

**CORRECTED
ORDER AND ENTRY**

On April 5, 2000, the State Medical Board of Ohio issued its Findings and Order in the Matter of Deleno H. Webb, III, M.D., whereby Dr. Webb's license to practice medicine and surgery in the State of Ohio was revoked; the revocation was stayed, and Dr. Webb's license was indefinitely suspended for a minimum of one year. A copy of those Findings and Order are attached hereto and incorporated herein.

Pursuant to 119.12, Ohio Revised Code, Dr. Webb appealed the Medical Board's Order to the Franklin County Court of Common Pleas, which affirmed the Medical Board's decision in March 2001. Thereafter, Dr. Webb appealed to the Tenth District Court of Appeals. By Opinion and Entry on November 29, 2001, the Court of Appeals issued a decision that remanded the case to the Board to consider whether Dr. Webb intentionally misled the Board by failing to disclose the West Virginia action on his applications for the renewal of Dr. Webb's Ohio license and to consider whether Dr. Webb is subject to discipline in light of the court reversal of the West Virginia Board of Medicine action.

WHEREFORE, pursuant to the instructions of the Tenth District Court of Appeals and upon approval and confirmation by vote of the Board on September 11, 2002, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for that date.

It is hereby ORDERED that:

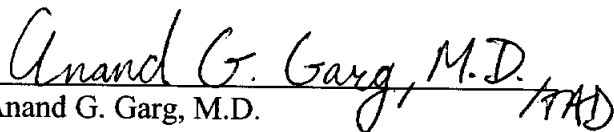
1. The certificate of Deleno H. Webb, III, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Webb's certificate is SUSPENDED for a period of ninety (90) days.

2. Dr. Webb shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Webb shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
3. Upon reinstatement, Dr. Webb's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five (5) years:
 - a. Dr. Webb shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
 - b. In the event that Dr. Webb should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Webb must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 - c. Dr. Webb shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective and upon his request for termination of the probationary period, or as otherwise requested by the Board.
 - d. Dr. Webb shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- e. Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Webb has privileges or appointments. Further, Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Webb applies for or obtains privileges or appointments. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty (30) days of receiving the return receipt.
 - f. If Dr. Webb violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
 - g. If Dr. Webb violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
 - h. Periods of time during which Dr. Webb's certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Webb's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)


Anand G. Garg, M.D.
Secretary

October 9, 2002
Date



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 12, 2002

REPORTS AND RECOMMENDATIONS

Dr. Somani announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Cardiology, Inc.; Michael B. Jacobs, M.D.; Michael J. O'Brien, D.O.; Jessica A. Ross, M.D.; Laurece D. Sherman, C.T., M.T.; Henry C. Veldenz, M.d.; Jeffrey W. Winholt, M.D.; and the Court of Common Pleas, Franklin County's July 16, 2002 Judgment Entry and Remand Order and the Board's Order of April 5, 2000 in the matter of Deleno H. Webb, III, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

Dr. Somani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye

Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Somani	- aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Somani stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....
DELENO H. WEBB, III, M.D.

.....
DR. STEINBERGH MOVED THE FOLLOWING: PURSUANT TO THE ORDER OF THE TENTH APPELLATE DISTRICT COURT OF APPEALS, THE BOARD HEREBY AMENDS ITS FINDINGS OF FACT OF APRIL 5, 2000, BY ADDING THE FOLLOWING AS FINDINGS OF FACT #6:

The July 21, 1999, West Virginia Board Order has been subsequently overturned by the Supreme Court of West Virginia.

FURTHER, THE BOARD HEREBY AMENDS THE CONCLUSIONS OF LAW OF ITS APRIL 5, 2000, BOARD ORDER AS FOLLOWS:

1. Conclusions of Law 2. and 4. are amended by striking the words “. . . even if unintentional . . .” from the last sentences.
2. Conclusion of Law 5. is amended by adding: “However, since the Supreme Court of West Virginia overturned the West Virginia Board’s action in this matter, this Board will impose no sanction on the basis of Section 4731.22(B)(22), Ohio Revised Code.”

FURTHER, the Board AMENDS the Report and Recommendation by striking the four paragraphs between the Conclusions of Law and the recommended Order.

FURTHER, the Board enters the following Order:

1. The certificate of Deleno H. Webb, III, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Webb's certificate is SUSPENDED for period of ninety (90) days.
2. Dr. Webb shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Webb shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
3. Upon reinstatement, Dr. Webb's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
 - a. Dr. Webb shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
 - b. In the event that Dr. Webb should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Webb must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 - c. Dr. Webb shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective and upon his request for termination of the probationary period, or as otherwise requested by the Board.
 - d. Dr. Webb shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or

before the first day of every third month.

- e. Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Webb has privileges or appointments. Further, Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Webb applies for or obtains privileges or appointments. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
 - f. If Dr. Webb violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
 - g. If Dr. Webb violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
 - h. Periods of time during which Dr. Webb's certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Webb's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

DR. BUCHAN SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh's motion:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye

Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

DELANO WEBB, M.D.

Appellant,

v.

STATE MEDICAL BOARD OF OHIO,

Appellee.

TERMINED

BY

CASE NO. 00CVF04-3449

JUDGE FAIS

JUDGMENT ENTRY

Rendered this 16th day of July, 2002.

Fais, J.

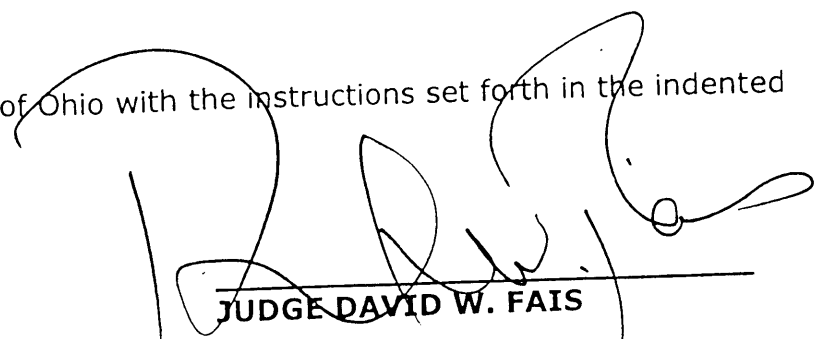
On November 29, 2001, the Court of Appeals of Ohio for the Tenth Appellate District issued a Judgment Entry reversing the prior Judgment Entry of this Court. The Court of Appeals further instructed this Court to remand the matter to the State Medical Board of Ohio ("Ohio medical board"). The Court of Appeals Judgment Entry provides that upon remand:

"[T]he Ohio medical board is instructed to consider whether appellant made statements with an intent to mislead the Ohio medical board. The Ohio Medical board is further instructed to consider whether appellant is subject to discipline pursuant to R.C. 4731.22 (B)(22), in light of evidence that the West Virginia medical board's decision to take disciplinary action against appellant may have been reversed and vacated by a West Virginia court."

Pursuant to the Court of Appeals' November 29, 2001 Judgment Entry, it is ORDERED, ADJUDGED, and DECREED that this matter is REMANDED to

FILED COURT
COMMON PLEAS OHIO
FRANKLIN CO.
2002 JUL 18 PM 3:31
CLERK OF COURTS

the State Medical Board of Ohio with the instructions set forth in the indented paragraph above.



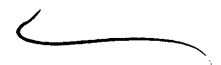
JUDGE DAVID W. FAISS

Copies to:

Stephen J. Pruneski, Esq.
Counsel for Plaintiff

Hanz R. Wasserburger, Esq.
Attorney General
Counsel for Defenant

7-16-07



IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT


12242102
COURT OF APPEALS
FRANKLIN COUNTY, OHIO
01 NOV 29 PM 12:23
CLERK OF COURTS

Delano H. Webb, III, M.D., :
Appellant-Appellant, :
v. : No. 01AP-469
State Medical Board of Ohio, : (ACCELERATED CALENDAR)
Respondent-Appellee. :

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on November 29, 2001, appellant's assignments of error are sustained, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court with instructions to remand this matter to the State Medical Board of Ohio ("Ohio medical board"). Upon remand, the Ohio medical board is instructed to consider whether appellant made statements with an intent to mislead the Ohio medical board. The Ohio medical board is further instructed to consider whether appellant is subject to discipline pursuant to R.C. 4731.22(B)(22), in light of evidence that the West Virginia medical board's decision to take disciplinary action against appellant may have been reversed and vacated by a West Virginia court. Costs are to be assessed against appellee.

BOWMAN, PETREE and LAZARUS, JJ.

By 
Judge Donna Bowman

ON COMPUTER 12

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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01 NOV 29 PM 12:15
CLERK OF COURTS

Delano H. Webb, III, M.D., :
Appellant-Appellant, :
v. : No. 01AP-469
State Medical Board of Ohio, : (ACCELERATED CALENDAR)
Respondent-Appellee. :

D E C I S I O N

Rendered on November 29, 2001

Stephen J. Pruneski and David S. Nichol, for appellant.

Betty D. Montgomery, Attorney General, and Hanz R. Wasserburger, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BOWMAN, J.

Appellant, Delano H. Webb, III, M.D., appeals from the judgment of the Franklin County Court of Common Pleas, which affirmed the decision of the State Medical Board of Ohio ("Ohio medical board") that permanently revoked appellant's medical license, stayed the revocation pending suspension of the license for not less than one year, and placed appellant on probation for five years after reinstatement. For the reasons that follow, we reverse and remand this case for further proceedings.

Appellant, a psychiatrist, practices primarily in West Virginia, where he had been licensed since 1974. He has also been licensed since 1975 in Ohio, where he serves as a consultant for a residential treatment facility for adolescent males.

By letter dated September 8, 1999, the Ohio medical board notified appellant that it intended to determine whether to take disciplinary action against his certificate to practice medicine in Ohio for alleged violations of R.C. Chapter 4731. In the letter, the Ohio medical board alleged that: (1) Dr. Webb had failed to disclose on his 1994, 1996 and 1999 Ohio renewal applications that disciplinary actions had been initiated against him by the West Virginia Board of Medicine ("West Virginia medical board"); and (2) Dr. Webb had been disciplined by the West Virginia medical board for having an improper sexual relationship with a patient.

Appellant represented himself at an administrative hearing before a hearing examiner on October 8, 1999. Appellant testified that he believed he accurately completed his 1994 and 1996 renewal applications. Appellant was asked on those applications whether any disciplinary action had been "taken or initiated" by licensing boards outside of Ohio and he responded "no." Appellant admitted that he knew at the time he completed the 1994 and 1996 applications that complaints had been filed against him by the West Virginia medical board. He testified, however, that he believed that the filing of complaints merely prompted investigations; he did not believe that the filing of complaints demonstrated that disciplinary action had been taken or initiated. Appellant further testified that he consulted with an attorney who advised appellant that "no" was the accurate answer to the question about disciplinary action on the 1994 and 1996 renewal applications. Appellant produced a corroborating affidavit from his

attorney. He also produced copies of his renewal applications to practice medicine in West Virginia and Kentucky, highlighting that he answered "yes" to those states' medical boards' questions about disciplinary action because the questions expressly referred to investigations.

Appellant acknowledged that the Ohio medical board changed the wording on the 1999 renewal application so that the question about disciplinary action also asked whether any investigations had been initiated. Appellant admitted that he inaccurately answered "no" when he should have answered "yes," as he was indeed under investigation by the West Virginia medical board. Appellant explained that he had instructed his secretary to pull his 1996 application and use it to complete the 1999 renewal application. He testified that neither he nor his secretary noticed the change in the wording of the question about disciplinary action. Appellant testified that his failure to accurately answer the question was inadvertent, and he apologized for his mistake.

In his report and recommendation, the hearing officer issued the following findings of fact:

1. On or about April 4, 1994, Delano H. Webb, III, M.D., signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: ... 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Webb responded, "No."

In fact, on or about November 5, 1993, the West Virginia Board of Medicine [West Virginia Board] had issued to Dr. Webb a Complaint and Notice of Hearing.

2. On or about March 14, 1996, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: ... 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Webb responded, "No."

In fact, on or about August 12, 1994, the West Virginia Board issued to Dr. Webb a Complaint and Notice of Hearing.

3. On or about April 5, 1999, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: ... 5.) Except for actions taken by this board, been notified of any investigation concerning you by, or, been notified of, any charges, allegations, or complaints filed against you, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license? This includes denial, limitation, restrictions, suspension, revocation, censure, reprimand or fine," Dr. Webb responded, "No."

In fact, in December 1998, two complaints alleging that Dr. Webb failed to release medical records upon request were filed against him with the West Virginia Board by patients. The West Virginia Board began investigation of those complaints and in February 1999, Dr. Webb filed responses to those complaints.

4. On or about July 21, 1999, the West Virginia Board entered an Order which revoked Dr. Webb's license to practice medicine and surgery in West Virginia, stayed such revocation, and placed his license on probation for a period of five years.

The West Virginia Board Order was based upon findings including that Dr. Webb engaged in a sexual relationship with an individual prior to March 1977 "at a time when she was a patient and a very young disturbed woman"; that after transferring this individual's care to another psychiatrist in

March 1977, Dr. Webb continued to care for and treat her, including prescribing potentially addictive drugs to her, giving numerous orders at hospitals regarding her care, and otherwise taking responsibility for her care, through 1983; and that Dr. Webb admitted to having sex and engaging in a sexual relationship with this individual, during the lengthy period of time from March 1977 through 1983.

5. Dr. Webb answered "Yes" to questions posed by the Kentucky Board and various health care agencies when those questions made reference to being under "investigation" by a licensing board.

Based upon his findings of fact, the hearing examiner concluded that appellant's conduct constituted fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board and, therefore, violated R.C. 4731.22(A). The hearing examiner further concluded that appellant's conduct amounted to publishing a false, fraudulent, deceptive, or misleading statement and, therefore, violated R.C. 4731.22(B)(5). In reaching his conclusions, the hearing examiner reasoned as follows:

*** Clearly, Dr. Webb's denial that any disciplinary action had been taken or initiated against him by any state licensing board other than the State Medical Board of Ohio?" [sic] in his application for renewal of his license was a misrepresentation of fact, and was likely to cause an ordinarily prudent person to be deceived. *Such a misrepresentation, even if unintentional, violates Ohio law.* [Emphasis added.]

The hearing examiner also concluded that the West Virginia medical board order revoking appellant's license to practice in West Virginia constituted an action by a state agency against appellant's license, which allows the Ohio medical board to impose discipline pursuant to R.C. 4731.22(B)(22). The hearing examiner noted that the West Virginia Board order was on appeal to the West Virginia courts. He stated, however, that, "even if the West Virginia Board Order is vacated[,] discipline of

Dr. Webb is justified by *** his misrepresentations to the Ohio Board." He proposed that appellant's medical license be revoked, with the revocation stayed pending suspension of his license for not less than one year. On April 5, 2000, the medical board voted to approve and confirm the hearing officer's proposed findings of fact, conclusions of law and order.

Appellant appealed the decision to the Franklin County Court of Common Pleas. The trial court determined that the Ohio medical board erred when it concluded that misrepresentations by appellant on his applications violated R.C. 4731.22, even if appellant made them *unintentionally*. Nonetheless, the trial court reasoned that "it is clear from the minutes of the Board meeting held April 5, 2000, that the Board did not believe that Dr. Webb did not intend to mislead it." The court also concluded that disciplinary action against appellant by the West Virginia medical board provided additional grounds for discipline in Ohio.

The trial court remanded the decision to the Ohio medical board with instructions that the board's order "should be amended technically to delete the *** language in which it adopted the erroneous conclusion of the hearing examiner and to add language which reflects their conclusion that Dr. Webb intended to deceive the Board." The trial court otherwise affirmed the decision of the Ohio medical board.

By order dated April 19, 2001,¹ the Ohio medical board amended its decision by deleting the phrases "even if unintentional" from its conclusions of law. The entry further stated as follows:

¹ The April 19, 2001 order is not before this court and we do not decide whether the order was clarified or was in effect a new, changed order.

*** The purpose of these deletions is to clarify the conclusions of the State Medical Board that Dr. Webb's misrepresentations were, in fact, intentional. This conclusion is evidenced by the full minutes of the Board's discussion of this matter on April 5, 2000, which are incorporated by this reference into the Board's Findings and Order of that same date.

On further appeal to this court, appellant now asserts the following assignments of error:

1. The Trial Court erred in upholding the State Medical Board of Ohio's Decision, which found that Dr. Webb's misrepresentations on his license renewal applications, even if unintentional, violates Ohio Law.
2. The Trial Court erred in upholding the State Medical Board of Ohio's Decision, irrespective of any intentional misrepresentations, based on the disciplinary actions taken by the State Medical Board of West Virginia.

At the outset, we note the applicable standards for reviewing an appeal from the state medical board. When considering an appeal from a medical board's order, a common pleas court must uphold the order if it is supported by reliable, probative and substantial evidence, and is in accordance with law. R.C. 119.12; *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. The court is obligated to accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession. *Pons*, at 621.

This court's review of the common pleas court, however, is limited to determining if the common pleas court abused its discretion. *Id.* Absent an abuse of discretion by the trial court, this court must affirm the trial court's judgment. *Id.* On questions of law, however, the common pleas court does not exercise discretion and our review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State*

Emp. Relations Bd. (1992), 63 Ohio St.3d 339, paragraph one of the syllabus. Because we find that the medical board's decision was not in accordance with law, we conclude that the trial court abused its discretion in affirming the medical board's decision.

By his first assignment of error, appellant argues that the trial court erroneously upheld the medical board's decision in spite of the fact that the decision indicated that appellant's misrepresentation, even if unintentional, had violated Ohio law. We conclude that the trial court erroneously upheld this portion of the medical board's decision. The decision was based on the medical board's erroneous conclusions that appellant could violate R.C. 4731.22(A) and 4731.22(B)(5), even if he did not intend to mislead the Ohio medical board. Moreover, the findings of fact adopted by the Ohio medical board do not establish that appellant intentionally misled the board.

The medical board adopted the hearing examiner's conclusions that appellant violated R.C. 4731.22(A) and 4731.22(B)(5). R.C. 4731.22(A) provides as follows:

The state medical board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

R.C. 4731.22(B) states as follows:

The board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation

the holder of a certificate for one or more of the following reasons:

(5) *** [P]ublishing a false, fraudulent, deceptive, or misleading statement.

We have previously concluded that, to find a violation of R.C. 4731.22(A), the Ohio medical board must find that the "statements were made with an intent to mislead the medical board." *In re Wolfe* (1992), 82 Ohio App.3d 675, 687. Likewise, in *Rajan v. State Med. Bd. of Ohio* (1997), 118 Ohio App.3d 187, 194, we concluded that "the same proof with regard to intent is required under R.C. 4731.22(B)(5)[.]" Accordingly, in order to discipline appellant for violations of R.C. 4731.22(A) or 4731.22(B)(5), the Ohio medical board was required to find that appellant intentionally misled the board.

The trial court properly concluded that the Ohio medical board committed error when it adopted a conclusion of law that indicated that appellant's intent was irrelevant. The trial court erred, however, when it nonetheless affirmed the board's decision that appellant had violated R.C. 4731.22(A) and 4731.22(B)(5). The court reasoned that "it is clear from the minutes of the Board meeting held April 5, 2000, that the Board did not believe that Dr. Webb did not intend to mislead it." We do not agree that the minutes from the Ohio medical board's meeting establish the requisite finding that appellant intended to mislead the board.

With regard to the issue of misrepresentation, the meeting minutes reflect the following colloquy among board members:

Dr. Somani stated that he looked at this case and there were two issues involved. On three separate occasions, when applying for renewal of his Ohio license, Dr. Webb responded "no" incorrectly to one of the questions asked on

the applications. In the past the Board has dealt with these types of issues in a harsh manner. Not telling the Board the truth is inappropriate. This was done on three separate occasions. Dr. Somani stated that he finds it difficult to believe that this was an oversight. Even if it was an oversight, it should be [sic] been caught the second or third time.

Dr. Somani continued that *** the Board doesn't know the details to know whether or not [the sexual relationship] was brief. If Dr. Webb is trying to minimize the second charge by saying it was brief, it reinforces that his three attempts to mislead this Board were not simple oversight. ***

*** Dr. Stienecker stated that he agrees with Dr. Somani that three repetitious miscues on the assertion to the Board certainly can't be ignored. ***

*** Dr. Bhati stated that *** the main thing under discussion is the three times Dr. Webb gave false answers on his renewal applications. ***

These excerpts from the meeting minutes, which constitute the entire documented discussion by the Ohio medical board in its April 5, 2000 meeting regarding the issue of misrepresentation, do not demonstrate that the board, as opposed to a few members, found that appellant intended to mislead it. Neither Dr. Stienecker nor Dr. Bhati concluded that appellant intentionally misled the board. Although Dr. Somani contemplated that it was possible that appellant's misrepresentations were "not simple oversight," he likewise never stated that appellant intentionally misled the board. Moreover, the board expressly adopted the hearing officer's report and recommendations, including the hearing officer's finding that appellant's renewal applications in other jurisdictions supported appellant's contention that his misrepresentations in Ohio were unintentional. In light of this record, we conclude that the trial court abused its discretion when it affirmed the Board's decision that appellant

had violated R.C. 4731.22(A) and 4731.22(B)(5). Accordingly, we affirm appellant's first assignment of error.

By his second assignment of error, appellant argues that the trial court erroneously upheld the medical board's decision, pursuant to R.C. 4731.22(B)(22), to take disciplinary action against appellant as a consequence of the disciplinary action that had been taken against him by the West Virginia medical board. R.C. 4731.22(B)(22) provides that the medical board may revoke or suspend a certificate for the following reason:

The limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance or an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees[.]

Appellant contends that, subsequent to the decision by the Ohio medical board but prior to the trial court's decision in the instant action, a West Virginia court reversed and vacated the West Virginia medical board's decision. Appellant contends that the trial court erred when it affirmed the Ohio medical board's decision notwithstanding the West Virginia's court's decision.

In its brief to this court, the Ohio medical board concedes that "the Board would not object to a remand in the interests of justice for the narrow and limited purpose of allowing the Board to consider Dr. Webb's one year suspension in light of the fact that one of their bases for discipline may have been overturned." We agree with this approach. See *Wolfe*, at 687 (noting that "it would be a substantial miscarriage of justice" for the Ohio medical board to deny a physician's licensure based upon

allegations that were ultimately cleared in another jurisdiction). We further note that the conclusions of law adopted by the Ohio medical board suggest that the Ohio medical board may not have intended to subject appellant to disciplinary action pursuant to R.C. 4731.22(B)(22) in the event that the West Virginia court vacated the West Virginia Board's disciplinary order. Mindful that an appeal of the West Virginia order was pending when it rendered its decision, the Ohio medical board adopted the hearing officer's conclusion that, "even if the West Virginia Board Order is vacated[,] discipline of Dr. Webb *is justified by *** his misrepresentations to the Ohio Board.*" (Emphasis added.) Accordingly, we sustain appellant's second assignment of error.

For the foregoing reasons, we sustain appellant's first and second assignments of error. The judgment of the Franklin County Court of Common Pleas is reversed and this case is remanded with instructions to remand this matter to the Ohio medical board. Upon remand, the Ohio medical board is instructed to consider whether appellant made statements with an intent to mislead the Ohio medical board. The Ohio medical board is further instructed to consider whether appellant is subject to discipline pursuant to R.C. 4731.22(B)(22), in light of evidence that the West Virginia medical board's decision to take disciplinary action against appellant may have been reversed and vacated by a West Virginia court.

Judgment reversed and case remanded.

PETREE and LAZARUS, JJ., concur.

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Crime Victims Services

COMMON PLEAS
IN THE COURT OF APPEALS
TENTH JUDICIAL DISTRICT
FRANKLIN COUNTY, OHIO

CLERK OF COURTS

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**COMMON PLEAS COURT
FRANKLIN CO. OHIO**

DELENO H. WEBB, III, M.D.

CASE NO.

Appellant,

v.

STATE MEDICAL BOARD
OF OHIO

**NOTICE OF APPEAL OF
COMMON PLEAS COURT
CASE NO: 00 CVF 04-3449**

Respondent.

Notice is hereby given that Appellant, DELENO WEBB, M.D., appeals to the Court of Appeals of Franklin County, Tenth Appellate District, from the March 15, 2001 Final and Appealable Order of the Franklin County Court of Common Pleas in Franklin County Court of Common Pleas Case Number 00CVF04-3449.

Respectfully submitted,

RODERICK LINTON LLP

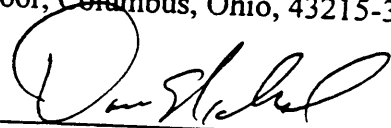
David S. Pruneski

STEPHEN J. PRUNESKI (#0033333)
DAVID S. NICHOL (#0033333)
1500 One Cascade Plaza
Akron, Ohio 44308
(330) 434-3000
Attorney for Appellant
DELENO H. WEBB, III, M.D.

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CLERK OF COURTS

CERTIFICATE OF SERVICE

A copy of the foregoing NOTICE OF APPEAL was sent by regular U.S. Mail this 19th day of April, 2001 to **Hanz R. Wasserburger, Esq.**, Assistant Attorney General, Health and Human Services Section, 30 E. Broad Street, 26th Floor, Columbus, Ohio, 43215-3428.



STEPHEN J. PRUNESKI (#0030333)
DAVID S. NICHOL (#0072194)

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ATTORNEY GENERAL

APR 24 2001

Crime Victims Services

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

:

:

DELENO H. WEBB, III, M.D.

:

ORDER AND ENTRY

Pursuant to the March 15, 2001 Decision and Entry of the Franklin County Court of Common Pleas in the appeal of the above referenced matter, the Findings and Order of the State Medical Board of Ohio in the Matter of Deleno H. Webb, III, M.D., is hereby AMENDED technically to delete the words "... even if unintentional ..." from the last sentences of Conclusions of Law #2 and #4. The purpose of these deletions is to clarify the conclusion of the State Medical Board that Dr. Webb's misrepresentations were, in fact, intentional. This conclusion is evidenced by the full minutes of the Board's discussion of this matter on April 5, 2000, which are incorporated by this reference into the Board's Findings and Order of that same date.

So ORDERED this 19th day of April, 2001.

STATE MEDICAL BOARD OF OHIO



Anand G. Garg, M.D.
Secretary

S. Warner

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

DELANO WEBB, M.D.

Appellant,

v.

STATE MEDICAL BOARD OF OHIO,

Appellee.

CASE NO. 00CVF04-3449

JUDGE FAIS

**DECISION AND JUDGMENT ENTRY AFFIRMING THE ORDER
OF THE STATE MEDICAL BOARD BUT REMANDING IT FOR
TECHNICAL CORRECTION**

Rendered this 15th day of March, 2001.

Fais, J.

This case is before the Court on a R.C. 119.12 appeal from the Order of the State Medical Board permanently revoking Appellant's medical license, staying the revocation, indefinitely suspending it for at least one year and placing it on probation for five years after reinstatement.

Delano Webb, M.D. is a psychiatrist who practices primarily in Huntington, West Virginia, but who is a consultant for a residential treatment facility for adolescent males in Ohio. He has been licensed in Ohio since 1975.

By letter dated September 8, 1999, and mailed September 9, 1999, the State Medical Board of Ohio notified Appellant that it intended to determine whether or not to take disciplinary action against his medical license based on the following allegations:

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FRANKLIN COUNTY, OHIO
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- (1) On or about April 4, 1994, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: ... 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" you responded, "No.

In fact, on or about November 5, 1993, the West Virginia Board of Medicine (hereinafter "West Virginia Board") issued to you a Complaint and Notice of Hearing.

- (2) On or about March 14, 1996, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: ... 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" you responded, "No."

In fact, on or about August 12, 1994, the West Virginia Board issued to you a Complaint and Notice of Hearing.

- (3) On or about April 5, 1999, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: ... 5.) Except for actions taken by this board, been

notified of any investigation concerning you by, or, been notified of, any charges, allegations, or complaints filed against you, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license? This includes denial, limitation, restriction, suspension, revocation, censure, reprimand or fine," you responded, "No."

In fact, in December 1998, two complaints alleging that you failed to release medical records upon request were filed against you with the West Virginia Board by patients; the West Virginia Board began investigation of those complaints; and in February 1,999, you filed responses to those complaints.

- (4) On or about July 21, 1999, the West Virginia Board entered an Order which revoked your license to practice medicine and surgery in West Virginia, stayed such revocation, and placed your license in probationary status for a period of five (5) years.

The West Virginia Board Order is based upon findings including that you engaged in a sexual relationship with an individual prior to March 1977 "at a time when she was a patient and a very young disturbed woman"; that after transferring this individual's care to another psychiatrist in March 1977, you continued to care for and treat her, including prescribing potentially addictive drugs to her, giving numerous orders at hospitals regarding her care, and otherwise taking responsibility for her care, through 1983; and that you admitted to having sex and engaging in a sexual relationship with this individual, during the lengthy period of time from March 1977 through 1983.

The Board advised that these allegations were in violation of the Medical Practices Act and specifically:

Allegations 1 and 2 constituted fraud, misrepresentation or deception in applying for a certificate in violation of R.C. 4731.22(A)

Allegations 1 & 2 amounted to publishing false, misleading or fraudulent statements in violation of R.C. 4731.22(B)(5)

Allegation 3 constituted fraud, misrepresentation or deception in applying for a certificate in violation of R.C. 4731.22(A).

Allegation 3 amount to publishing a false, misleading or fraudulent statement in violation of R.C. 4731.22(B)(5).

Allegation 4 constituted the limitation of his license in violation of R.C. 4731.22(B)(22).

The letter also notified Appellant of his right to a hearing. On October 8, 1999, the Board received Appellant's request for hearing dated October 5, 1999. The hearing was held on December 20, 1999 before an attorney hearing examiner at which time Appellant represented himself.

The State presented its case through the certified documents from West Virginia and through cross-examination of Appellant. The documentary evidence consisted of the various documents generated by the West Virginia Board including complaints and orders. There were also copies of the 1994, 96, 98 and 99 renewal applications signed by Dr. Webb. The complaint against Dr. Webb concerning the patient referred to in allegation 4 was mailed to Dr. Webb on November 5, 1993 (Exhibit 2). An additional complaint was filed on August 12, 1994. The resultant Order of the West Virginia Board, Exhibit 4, dated July 21, 1999, stayed the revocation of his license and placed him on probation. The

Board found that he had had a sexual relationship with a patient who came to him as a juvenile and who had significant psychological problems. Knowing the complaint had been filed and a hearing scheduled, Dr. Webb nevertheless answered in the negative the following question on his 1994, 1996, and 1998¹ renewal applications:

At any time since signing your last application for renewal of your certificate, have you:

- (5) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?

It is clear West Virginia had initiated disciplinary action against him since it was the Board which filed the complaint. Appellant explained that he felt that since no disciplinary action had yet been imposed, he could honestly answer the question "no". His attorney also advised him to answer "no", distinguishing the language on the Kentucky application, where he is also licensed, from that on the Ohio. Kentucky's read as follows:

Since you last registered your Kentucky license, have you been disciplined or denied; have you made an act of surrender or resignation; or are you currently under investigation . . .

In 1999, Ohio changed question (5) to read as follows:

At any time since signing your last application for renewal of your certificate, have you:

- (5) Except for actions taken by this board, been notified of any investigation concerning you by, or, been notified of, any charges, allegations or complaints filed against you, any board, bureau, department, agency, or other body, including those in

¹ The Board did not charge him based on the 1998 application.

Ohio, with respect to a professional license? This includes denial, limitation, restriction, suspension, revocation, censure, reprimand or fine.

Despite the fact that the question now clearly includes charges brought, but not yet resolved, Dr. Webb again answered "no". In his testimony, he blamed his secretary, stating that she used the old forms to complete the new ones and that neither of them noticed the question had been changed. He failed to disclose his problems with West Virginia or two complaints which were filed in December, 1998, over a dispute over patient medical records. Despite the fact that Appellant responded to those complaints, and they were not resolved in his favor until May and July, 1999, respectively, on April 5, 1999, Appellant answered "No" to question #5 last cited above. Eventually, the West Virginia Board determined not to take action against Dr. Webb's license for failure to provide medical records to his patients upon their request.

As regards allegation #4, Appellant admitted the sexual relationship but denied it transpired while he was treating Patient A. He admits he was disciplined by West Virginia for that transgression.

The sections of the Medical Practices Act with which Appellant is charged [R.C. 4731.22(A) and (B)(5) and (B)(22)] read² as follows:

(A) The state medical board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination or to have committed

² This section was later amended.

fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

(B) The board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(5) Soliciting patients or publishing a false, fraudulent, deceptive, or misleading statement.

(22) The limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees;

Appellant argues that his answers to question 5 were technically correct and that there was no attempt to mislead on his part. He asserts that he questioned his lawyers and others in attempting to answer the question correctly. He asserts that there was no intent to mislead the Board and that the charges of publishing a false statement or misrepresentation during the application process cannot be sustained. He points to the hearing examiner's conclusion of law which states:

Such a misrepresentation, even if unintentional, violates Ohio law.

In both *In Re Wolfe (1992)*, 82 Ohio App. 3d 675 and *Rajan v. State Med. Bd. of Ohio (1997)*, 118 Ohio App. 3d 187, the Franklin County Court of Appeals held there must be some intent to misrepresent facts in order to rise to the definition contained in the code:

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

Thus, to the extent the Board adopted that conclusion of law, there was error.

However, in this case, it is clear from the minutes of the Board meeting held April 5, 2000, that the Board did not believe that Dr. Webb did not intend to mislead it. His intent can be inferred from the evidence. If Appellant truly wanted to be honest, he would have admitted the investigation was ongoing or he would have contacted the Board to determine whether or not it was necessary to report the complaints. After the language of question five was changed and there was no longer any ambiguity, he blamed the incorrect answer on his secretary. It was his responsibility to read and complete the application, not his secretary's. Its importance is demonstrated by language on the certification portion of the form which reads:

"I certify, under penalty of loss of my right to practice in the state of Ohio . . . that the information provided on this application for renewal is true and correct in every respect."

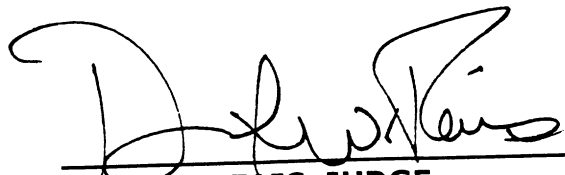
Additionally, the Board felt that his attempt to minimize the importance of his relationship with his patient, whether former or not, lent credibility to the State's assertion that he would also minimize or misrepresent his problems with West Virginia. This reasoning is entirely rationale.

Based on the sheer number of occasions, the Board could certainly infer that he failed to disclose material facts in order to gain a favorable result—re-licensure. Clearly, Appellant knew the West Virginia allegations would cause licensure problems in Ohio.

Additionally, the 1999 Order of the West Virginia Board constituted a limitation on his license. This is a ground for discipline entirely separate from the allegations of misrepresentation. The Board dealt with him rather leniently considering the egregious circumstances of the case, probably because the allegations were so old. Appellant argues that the Ohio Board was exceedingly harsh on him considering the West Virginia penalty. Given that Ohio had three³ additional incidents, it is not surprising that the Board imposed a harsher punishment. Additionally, it is clear that the penalty to be imposed is entirely within the discretion of the Board who is made up largely of Appellant's peers and who are in a better position than the Court to determine the ethical and technical requirements of the medical profession. ***Pons v. State Med. Bd. of Ohio (1993), 66 Ohio St. 3d 619.***

³ In actuality, there were four including the uncharged 1998 application.

The Board's Order should be amended technically to delete the above language in which it adopted the erroneous conclusion of the hearing examiner and to add language which reflects their conclusion that Dr. Webb intended to deceive the Board. It is **REMANDED** to the Board for that purpose. It is otherwise **AFFIRMED** since there is ample evidence in the record to support the Board's conclusion that there was misrepresentation in the answers given to question 5 and that the West Virginia license had been placed on probation. Costs to Appellant.



DAVID W. FAIS, JUDGE

Appearances:

Stephen J. Pruneski, Esq.
Attorney for Appellant

Hanz R. Wasserburger, Esq.
Attorney for Appellee

3-15-01



T. Dilling

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

DELANO H. WEBB, III, M.D.,

:

Plaintiff,

:

CASE NO. 00CVF04-3449

-vs-

:

JUDGE DAVID W. FAIS

STATE MEDICAL BOARD OF OHIO,

:

Defendant.

:

DECISION SUSTAINING APPELLANT'S MOTION TO STAY THE ORDER OF THE
STATE MEDICAL BOARD OF OHIO FILED APRIL 26, 2000

Rendered this 17th day of July 2000.

Fais, J.

This matter is before the Court upon Appellant's motion to stay the order of the State Medical Board of Ohio, filed April 26, 2000. Appellee filed a memorandum contra on May 5, 2000, followed by Appellant's reply on May 12, 2000.

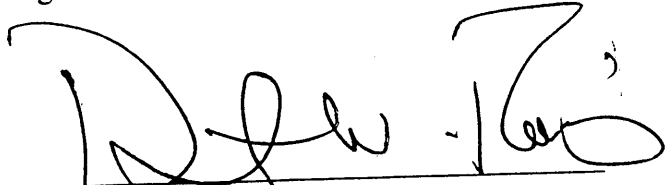
"In the case of an appeal from the state medical board or chiropractic examining board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. This provision shall not be construed to limit the factors the court may consider in determining whether to suspend an order of any other agency pending determination of an appeal." R.C. §119.12

After careful consideration and review the Court finds that Appellant will suffer an undue hardship, unless the suspension is stayed pending the appeal. Furthermore, the Court finds that Appellant does not pose a risk to the health, safety, and welfare of the public. Appellant's

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COMMON PLEAS, OHIO
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suspension stems from an alleged failure to disclose an investigation that was initiated in another state. Appellee has raised no issues as to the Appellant's ability to practice medicine.

Based upon the foregoing the Court **SUSTAINS** Appellant's motion and **GRANTS** a stay of the State Medical Board's suspension, pending the outcome of the appeal.



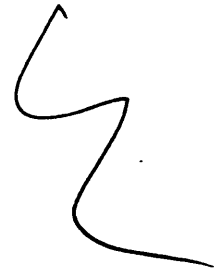
DAVID W. FAIS, JUDGE

COPIES TO:

Stephen J. Pruneski, Esq
Attorney for Plaintiff

Hanz R. Wasserburger, Esq
Attorney General
Attorney for Defendant

7-11-00



APR 19 2000

IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY, OHIO

DELANO H. WEBB, III, M.D.

Case No.

Appellant

v.

NOTICE OF APPEALSTATE MEDICAL BOARD OF
OHIO

Respondent

Notice is given that Delano H. Webb, III, M.D. appeals to the Court of Common Pleas from the Order of the State Medical Board of Ohio revoking the certificate of Delano H. Webb, III, M.D. to practice medicine and surgery in the State of Ohio on April 5, 2000. A copy of the Final Order is attached as Exhibit "A".

APR 19 2000

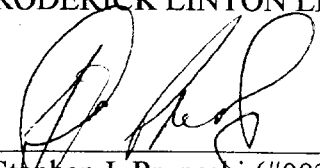
The grounds for appeal are as follows:

1) Revocation of Dr. Webb's medical license pursuant to Ohio Revised Code Section 4731.22(A) was not supported by reliable, probative and substantial evidence. There were no findings of fact that Dr. Webb intended to deceive the State Medical Board of Ohio when he submitted his application for renewal of his medical license in 1994, 1996 and 1999.

2) Revocation of Dr. Webb's medical license pursuant to Ohio Revised Code Section 4731.22(B)(5) was not supported by reliable, probative and substantial evidence. There were no findings of fact that Dr. Webb made a publication with the intent to deceive the State Medical Board of Ohio when he submitted his application for renewal of his medical license in 1994, 1996 and 1999.

3) Revocation of Dr. Webb's medical license pursuant to Ohio Revised Code Section 4731.22(B)(22) was not supported by reliable, probative and substantial evidence. There were no findings of fact that the Order of the West Virginia Medical Board placing Dr. Webb on probation for a period of five years warrants revocation of Dr. Webb's Medical License in the State of Ohio.

RODERICK LINTON LLP

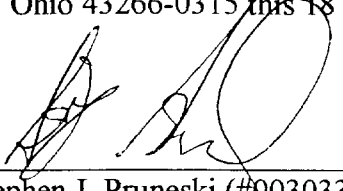


Stephen J. Pruneski (#0030333)
Attorney for Appellant
1500 One Cascade Plaza
Akron, OH 44308
(330) 434-3000

OHIO STATE MEDICAL BOARD
APR 19 2000

CERTIFICATE OF SERVICE

A copy of the foregoing was sent by overnight certified Mail to the State Medical Board of Ohio 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0315 this 18th day of April, 2000.



Stephen J. Pruneski (#0030333)



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

April 5, 2000

Deleno H. Webb, III, M.D.
1326 Sixth Avenue
Huntington, WV 25701

Dear Doctor Webb:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 5, 2000, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 281 981 278
RETURN RECEIPT REQUESTED

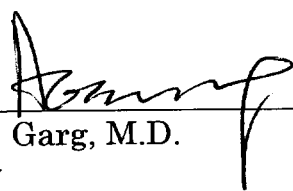
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CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 5, 2000, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Deleno H. Webb, III, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Anand G. Garg, M.D.
Secretary

APRIL 5, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

DELENO H. WEBB, III, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 5, 2000.

Upon the Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. The certificate of Deleno H. Webb, III, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Webb's certificate is SUSPENDED for an indefinite period of time, but not less than one year.
2. Dr. Webb shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Webb shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

3. The Board shall not consider reinstatement of Dr. Webb's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Webb shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Webb shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
 - c. Dr. Webb shall submit documentation from the West Virginia Board of Medicine [West Virginia Board], dated no earlier than sixty days prior to his application for reinstatement, indicating that he has maintained full compliance with the West Virginia Board Order.
 - d. In the event that Dr. Webb has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
4. Upon reinstatement, Dr. Webb's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
 - a. Dr. Webb shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
 - b. In the event that Dr. Webb should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Webb must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 - c. Dr. Webb shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective and upon his

request for termination of the probationary period, or as otherwise requested by the Board.

- d. Dr. Webb shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. At the time he submits his quarterly declarations, Dr. Webb shall also submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the West Virginia Board. Moreover, Dr. Webb shall cause to be submitted to the Board copies of any reports that he submits to the West Virginia Board whenever the New Jersey or Pennsylvania Board requires such submission.
- f. Dr. Webb shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by the West Virginia Board.
- g. Dr. Webb shall provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- h. Dr. Webb shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should Dr. Webb commence practice in Ohio, the Board may place his certificate under additional probationary terms, conditions, or limitations, including the following:
 - i. Dr. Webb shall submit for the Board's prior approval the name of a monitoring physician. Dr. Webb shall further submit to the Board and receive its approval for a plan of

practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment where Dr. Webb's activities will be directly supervised and overseen by the monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Webb and provide the Board with reports on Dr. Webb's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Webb's quarterly declaration. It is Dr. Webb's responsibility to ensure that the reports are timely submitted.

Dr. Webb shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Webb shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Webb shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Webb shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

- ii. Dr. Webb shall appear in person for interviews before the full Board or its designated representative within three months of the commencement of practice in Ohio, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Webb's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Webb shall immediately submit to the

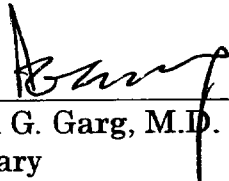
Board a written request to be notified of his next scheduled appearance.

- iii. Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Webb has privileges or appointments. Further, Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Webb applies for or obtains privileges or appointments. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- iv. If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Webb shall cease practicing medicine in Ohio beginning the day following Dr. Webb's receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice of medicine in violation of Section 4731.41, 4731, Ohio Revised Code.
- i. If Dr. Webb violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- j. If Dr. Webb violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- k. Periods of time during which Dr. Webb's certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

5. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Webb's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Anand G. Garg, M.D.
Secretary

APRIL 5, 2000
Date

2000 FEB 28 A 11:45

**REPORT AND RECOMMENDATION
IN THE MATTER OF DELENO H. WEBB, III, M.D.**

The Matter of Deleno H. Webb, III, M.D., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 20, 1999.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated September 8, 1999, the State Medical Board of Ohio [Board] notified Deleno H. Webb, III, M.D., that it had proposed to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on the following allegations:

1. On or about April 4, 1994, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Webb responded, "No."

In fact, on or about November 5, 1993, the West Virginia Board of Medicine [West Virginia Board] had issued to Dr. Webb a Complaint and Notice of Hearing.

2. On or about March 14, 1996, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" he responded, "No."

In fact, on or about August 12, 1994, the West Virginia Board issued to Dr. Webb a Complaint and Notice of Hearing.

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OF OHIO
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3. On or about April 5, 1999, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Except for actions taken by this board, been notified of any investigation concerning you by, or, been notified of, any charges, allegations, or complaints filed against you, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license? This includes denial, limitation, restriction, suspension, revocation, censure, reprimand or fine," he responded, "No."

In fact, in December 1998, two complaints alleging that Dr. Webb failed to release medical records upon request were filed against him with the West Virginia Board by patients; the West Virginia Board began investigation of those complaints; and in February 1999, Dr. Webb filed responses to those complaints.

4. On or about July 21, 1999, the West Virginia Board entered an Order which revoked Dr. Webb's license to practice medicine and surgery in West Virginia, stayed such revocation, and placed his license in probationary status for a period of five years.

The West Virginia Board Order is based upon findings including that Dr. Webb engaged in a sexual relationship with an individual prior to March 1977 "at a time when she was a patient and a very young disturbed woman"; that after transferring this individual's care to another psychiatrist in March 1977, Dr. Webb continued to care for and treat her, including prescribing potentially addictive drugs to her, giving numerous orders at hospitals regarding her care, and otherwise taking responsibility for her care, through 1983; and that he admitted to having sex and engaging in a sexual relationship with this individual, during the period of time from March 1977 through 1983.

A copy of the West Virginia Board Order was attached to the allegations and fully incorporated therein.

The Board alleged that the acts, conduct, and/or omissions of Dr. Webb, as described in paragraphs 1 and 2, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or

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certificate issued by the board,' as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect prior to March 9, 1999."

The Board further alleged that, Dr. Webb's acts, conduct, and/or omissions as alleged in paragraphs 1 and 2 above individually and/or collectively, constitute "'publishing a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999."

The Board also alleged that, Dr. Webb's acts, conduct, and/or omissions as alleged in paragraph 3, individually and/or collectively, constitute "'[f]raud, misrepresentation or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect on or after March 9, 1999."

The Board further alleged that, Dr. Webb's acts, conduct, and/or omissions as alleged in paragraph 3, individually and/or collectively, constitute "'[m]aking a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect on or after March 9, 1999."

The Board also alleged that the West Virginia Board Order, as alleged in paragraph 4, constitutes "'[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code."

Accordingly, the Board advised Dr. Webb of his right to request a hearing in this matter. (State's Exhibit 1A)

- B. On October 8, 1999, Dr. Webb submitted a written hearing request. (State's Exhibit 1B)

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II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Hanz R. Wasserburger, Assistant Attorney General.
- B. On behalf of the Respondent: Having been advised of his right to be represented by counsel, Dr. Webb represented himself at hearing.

EVIDENCE EXAMINED

I. Testimony Heard

Deleno H. Webb, III, M.D., as on cross examination.

II. Exhibits Examined

A. Presented by the State:

- 1. State's Exhibits 1A-1G: Procedural exhibits. [Note: Exhibit 1G was a post hearing addition to the record.]
- * 2. State's Exhibit 2: Certified copy of November 5, 1993, Complaint and Notice of Hearing with corresponding return mail receipt issued to Deleno H. Webb, III, M.D., by the West Virginia Board of Medicine [West Virginia Board].
- 3. State's Exhibit 3: Certified copy of August 12, 1994, Complaint and Notice of Hearing with corresponding return mail receipt issued to Dr. Webb by the West Virginia Board.
- * 4. State's Exhibit 4: Certified copies of July 21, 1999, Order and Decision incorporating the June 25, 1999, Recommended Findings of Fact and Conclusions of Law and Recommended Decision of the Hearing Examiner, in *West Virginia Board of Medicine, Petitioner, v. Deleno H. Webb, M.D., Respondent* [West Virginia v. Webb].
- * 5. State's Exhibit 5: Certified copies of December 20, 1998, Complaint and July 12, 1999, Decision *In Re: Deleno H. Webb, III, M.D., Complaint*

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Number 98-156-J [In re: Webb 98-156-J]. Also attached are certified copies of December 19, 1998, Complaint and May 10, 1999, Decision In Re: Deleno H. Webb, III, M.D., Complaint Number 98-156-K [In re: Webb 98-156-K]. Both matters were before the West Virginia Board.

- * 6. State's Exhibit 6: Certified copy of January 11, 1999, Notice of Complaint with corresponding return mail receipt issued to Dr. Webb by the West Virginia Board. *In re: Webb 98-156-J*
 - * 7. State's Exhibit 7: Certified copy of January 11, 1999, Notice of Complaint with corresponding return mail receipt issued to Dr. Webb by the West Virginia Board. *In re: Webb 98-156-K*
 - 8. State's Exhibit 8: Certified copies of Dr. Webb's 1992, 1994, 1996, 1998, and 1999 Ohio renewal applications.
- B. Presented by the Respondent:
- 1. Respondent's Exhibit A: Copy of April 4, 1994, Application and Instructions Biennial License Renewal for the Period October 1, 1994, through September 30, 1996, from Dr. Webb to the Board.
 - 2. Respondent's Exhibit B: Copy of January 22, 1996, Application for Registration of Kentucky Medical License from Dr. Webb to the Kentucky Board of Medical Licensure.
 - 3. Respondent's Exhibit C: Copy of April 14, 1999, Cabell Huntington Hospital Medical and Dental Staff Application for Reappointment submitted by Dr. Webb to the Hospital.
 - 4. Respondent's Exhibit D: Copy of September 20, 1999, River Park Hospital Application for Reappointment-Medical Staff submitted by Dr. Webb.
 - 5. Respondent's Exhibit E: Copy of April 21, 1997, Application for Medical Professional Liability Insurance submitted to the P*I*E Mutual Insurance Company by Dr. Webb.

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- * 6. Respondent's Exhibit F: Packet of Documents related to the underlying allegations in *West Virginia v. Webb*, consisting of:
- a. Copy of December 10, 1999, Affidavit of Virginia Louise Webb-McGinnis
 - b. Copy of October 2, 1992, letter from the West Virginia Board to Dr. Webb.
 - c. Copy of December 18, 1999, Affidavit of C. Norman Davis.
 - d. Copy of a portion of the June 26, 1995, deposition of Patient A taken in her civil action against Dr. Webb and others.
 - e. Copy of a single page of Patient A's medical record dated in 1977.
 - f. Copy of April 12, 1993, Affidavit of Robert W. Hibbard, M.D.
7. Respondent's Exhibit G: Copy of January 18, 2000, letter to the Board from David J. Lockwood, Esq., and accompanying Affidavit.

Note: Exhibits marked "*" are sealed to protect patient confidentiality. Highlighting of portions of the Respondent's Exhibits was done by the Respondent or on his behalf prior to admission. Social Security numbers were redacted post hearing by the Attorney Hearing Examiner without objection by the parties.

PROCEDURAL NOTE

This matter was held open until January 19, 2000, to allow Dr. Webb to submit Respondent's Exhibit G. Dr. Webb was asked to provide Exhibit G as quickly as possible to allow the State to respond or object. Respondent's Exhibit G was filed on January 19, 2000. As a result the Attorney Hearing Examiner reopened the record and allowed the State to file objections to the admission of Respondent's Exhibit G. After a review of the State's objections, Respondent's Exhibit G was admitted and the State's objections entered as a procedural exhibit. Subsequently the record was closed on January 28, 2000. (Transcript at 20-23; Respondent's Exhibit G; State's Exhibit 1G)

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

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1. Deleno H. Webb, III, M.D., graduated from the West Virginia University School of Medicine in 1971 and completed a two year psychiatry residency in 1973. He also attended residency training at the University of Kentucky Medical School Hospital. The record does not indicate if he completed this program. He has practiced psychiatry in Huntington, West Virginia since 1974. Dr. Webb testified that his only practice in Ohio is as a consultant to a residential treatment facility that serves adolescent males. (Transcript [Tr.] at 11; Respondent's Exhibit [Res. Ex.] E)

On or about November 5, 1993, the West Virginia Board of Medicine [West Virginia Board] issued to Dr. Webb a Complaint and Notice of Hearing. The West Virginia Board complaint was based on allegations made by Patient A that Dr. Webb had engaged in sexual misconduct between September 1975 and sometime in 1985. Dr. Webb was notified that a hearing on the complaint would begin on January 6, 1994. (Tr. 27-31; State's Exhibit [St. Ex.] 2)

2. On or about April 4, 1994, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Webb responded, "No." (Tr. 26-27, 30-32; St. Ex. 8; Res. Ex. A)

In his October 5, 1999, letter to the Board and again at hearing, Dr. Webb argued that "No" was the correct answer on his 1994 renewal application because the West Virginia Board did not "'take or initiate disciplinary action' until their Order and Decision of July 21, 1999." Dr. Webb commented at hearing that his interpretation was that once the West Virginia Board "had all their hearings and considered all the evidence, then they would initiate disciplinary action against me. If they found in the negative against me, then they would initiate disciplinary action." (Tr. 15, 32; St. Ex. 1B)

3. On or about August 12, 1994, the West Virginia Board issued to Dr. Webb a second Complaint and Notice of Hearing arising out of allegations made by Patient A. Dr. Webb was notified that a hearing on this matter would begin on September 29, 1994. (St. Ex. 3)

On or about January 22, 1996, Dr. Webb signed his application for renewal of his Kentucky medical license. In this application, in response to a question which reads "Since you last registered your Kentucky license, have you been disciplined or denied; have you made an act of surrender or resignation; or are you currently under investigation in regard to[...]medical or osteopathic licensure in any state or Canadian province[.]"

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Dr. Webb answered "Yes." In his October 5, 1999, letter to the Board Dr. Webb explained that he answered yes to this question because, at that time, an investigation was ongoing in regard to the complaint made to the West Virginia Board. (Tr. 10-11, 15-16; St. Ex. 1B; Res. Ex. B)

At hearing Dr. Webb stated that he wanted to draw the Board's attention to the Kentucky application and the different language including the phrase "currently under investigation." Dr. Webb explained that his "yes" answer to this question illustrates that he did not intend to deceive the Ohio Board. (Tr. 10-11, 15-16; Resp. Ex. A and B)

4. On or about March 14, 1996, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" he responded, "No." (Tr. 33; St. Ex. 8)

In his October 5, 1999, letter to the Board and again at hearing, Dr. Webb argued that "No" was the correct answer on his 1996 renewal application because the West Virginia Board did not "'take or initiate disciplinary action' until their Order and Decision of July 21, 1999." (Tr. 33-35; St. Ex. 1B)

5. On or about April 21, 1997, Dr. Webb signed an application for Medical Professional Liability Insurance. That application contains a question which reads: "Has any State Board ever filed a complaint against or investigated your license status?" Dr. Webb responded "Yes." At hearing Dr. Webb argued that this application illustrates his lack of intent to deceive the Board. (Tr. 16-17; Resp Ex. E)
6. In December 1998, two complaints were filed with the West Virginia Board by different patients alleging that Dr. Webb failed to release medical records upon request. The West Virginia Board notified Dr. Webb of the complaints. Dr. Webb filed responses with the West Virginia Board in February 1999. On May 10, 1999, in respect to the first December complaint, the Complaint Committee of the West Virginia Board filed a decision finding that there was no evidence on which to proceed against Dr. Webb. On July 12, 1999, in respect to the second December complaint, the Complaint Committee of the West Virginia Board filed a decision again finding that there was no evidence on which to proceed against Dr. Webb. (St. Exs. 5-7)

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On or about April 5, 1999, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Except for actions taken by this board, been notified of any investigation concerning you by, or, been notified of, any charges, allegations, or complaints filed against you, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license? This includes denial, limitation, restriction, suspension, revocation, censure, reprimand or fine," he responded, "No." (St. Ex. 8)

In his October 5, 1999, letter to the Board, Dr. Webb admitted that "Yes" was the correct answer on his 1999 renewal application and that he had answered incorrectly. At hearing he reiterated this admission. Dr. Webb explained that his secretary had filled out his 1999 Ohio renewal application and that he signed it. He further explained that he and his secretary both failed to detect the change in language on the Ohio application and that he should have answered "Yes" because of the new language covering investigations. Dr. Webb apologized to the Board for this oversight. (Tr. 11, 20, 24-25; St. Ex. 1B)

On or about April 14, 1999, Dr. Webb signed his application for reappointment to the Cabell Huntington Hospital Medical and Dental Staff. This application contains a question which reads: "Please indicate if any of the following have ever been, or are currently in the process of being denied, revoked, suspended, reduced, limited, placed on probation, or not renewed since your last reappointment. Also indicate if you have voluntarily relinquished, withdrawn or failed to proceed with an application for any of the following in order to avoid an adverse action, to preclude an investigation or while under investigation relating to professional conduct since your last reappointment. License to practice in any state?" Dr. Webb answered "No." At hearing, Dr. Webb explained that the purpose of this exhibit is to show that he consistently distinguished between forms that asked about initiation of disciplinary proceedings as compared to those that asked about investigations. He stressed that he consistently answered all applications and did not intend to deceive anyone. (Tr. 16; Res. Ex. E)

7. At hearing, Dr. Webb stated that in respect to his 1994, 1996, and 1998 Ohio renewal applications he had consulted with counsel in West Virginia. He further stated that he and his counsel consulted with a number of others including the attorney who had been handling his case before the West Virginia Board. He explained that due to the advice he received and his own opinion that no action was "initiated" by the West Virginia Board until their July 12, 1999, Decision that "No" was the correct answer to question 5 on each of the renewal applications filed prior to 1999. Dr. Webb noted that he did not consult with employees of the Board. This contrasts with Dr. Webb's admission that he should of

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answered "Yes" to the reworded question umber 5 on his 1999 renewal application.
(Tr. 10, 25-27, 30-35)

By affidavit and letter dated January 18, 2000, David J. Lockwood, Esq., affirmed that he has been licensed to practice law in Kentucky and West Virginia since 1966 and that he has represented Dr. Webb for many years. Mr. Lockwood further affirmed that during the 1990's he reviewed both the Ohio and Kentucky medical license renewal applications. Based on differences in the wording of these he "instructed Dr. Webb that he should answer the Kentucky application in the affirmative" He also instructed Dr. Webb to answer no on the Ohio application "because the investigation was, in fact, in process but no charges had been brought at that time." Mr. Lockwood noted that he can not be certain when these discussions with Dr. Webb occurred but he believes they were between 1992 and 1995 inclusive. Dr. Webb explained at hearing that Mr. Lockwood is awaiting a heart transplant and as a result had been unable to travel to Columbus for hearing. (Tr. 20-23; Res. Ex. G)

8. On or about July 21, 1999, the West Virginia Board entered an Order which revoked Dr. Webb's license to practice medicine and surgery in West Virginia, stayed such revocation, and placed his license on probation for a period of five years. At hearing Dr. Webb stated that this decision has been appealed to the Circuit Court of Kanawha County. (Tr. 11; St. Ex. 4)

The West Virginia Board Order was based upon findings including that Dr. Webb engaged in a sexual relationship with an individual prior to March 1977 "at a time when she was a patient and a very young disturbed woman"; that after transferring this individual's care to another psychiatrist in March 1977, he continued to care for and treat her, including prescribing potentially addictive drugs to her, giving numerous orders at hospitals regarding her care, and otherwise taking responsibility for her care, through 1983; and that he admitted to having sex and engaging in a sexual relationship with this individual, during the period of time from March 1977 through 1983. (St. Ex. 4)

9. Dr. Webb noted, in his October 5, 1999, letter to the Board, that the underlying West Virginia matter has been the subject of numerous hearings since 1983 and that the West Virginia Order and Decision was currently under appeal in the Kanawha County Circuit Court and had been partially stayed. Dr. Webb represented that the allegations underlying the West Virginia action concerned incidents in 1977. He noted that he had transferred the care of Patient A to another physician in 1977 because she was responding better to a psychotherapist in his office. Dr. Webb stated that his only subsequent doctor-patient contact took place while he was providing call coverage to a colleague who was out of town. Dr. Webb explained that the West Virginia Board determined that such call

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coverage constituted a doctor/patient relationship. Dr. Webb stated that, at that time, West Virginia had no regulations concerning conduct between physicians and former patients. (St. Ex. 1B)

In his October 5, 1999, letter to the Board, Dr. Webb stated that Patient A had filed a civil suit against him in 1994 and that suit was settled in 1995. Dr. Webb stated that since that settlement, Patient A has refused to cooperate with the West Virginia Board and this has resulted in the inability of his counsel to cross-examine patient A or her current psychotherapist and psychiatrist about testimony they gave during the investigation. Dr. Webb alleged that Patient A filed her complaint after being hypnotized by her current psychiatrist. Dr. Webb questioned the recollections of patient A due to the suggestibility of a person under hypnosis. (St. Ex. 1B)

10. At hearing, Dr. Webb observed that the package of affidavits and other documents contained in Respondent's Exhibit F do not bear directly on the issues before the Board. However, he requested the admission of these documents to illustrate the difficulties that he has faced since Patient A's original complaint. In addition he desired to draw attention to inconsistencies in Patient A's story of what had occurred. (Tr. 17-18; Resp. Ex. F)

By letter dated October 2, 1992, the West Virginia Board alleged, inter alia, that "physical intimacy" had occurred between Dr. Webb and Patient A at the apartment of Dr. Webb's sister in October 1975 and continued in the fall of 1975, in 1976, and 1977 at various places including Dr. Webb's office and the home of Dr. Webb's sister. The West Virginia Board specifically alleged that one of the incidents occurred on or about July 17, 1977. By affidavit dated December 10, 1999, Dr. Webb's sister affirmed that she did not reside or live in Huntington West Virginia prior to July 1977. Dr. Webb also provided an affidavit from C. Norman Davis that suggests that his office was not on the enclosed porch described by Patient A until August 1978. (Res. Ex. F)

On or about June 26, 1995, Patient A testified in a deposition in a civil matter filed against Dr. Webb and others. During her testimony Patient A stated that Dr. Webb had taken her to his office and offered her marijuana sometime in the 1970's. Later in her deposition she stated that later during her first hospitalization at St. Mary's Dr. Webb again took her from the hospital and they had sexual intercourse for the first time. (Res. Ex. F)

Robert W. Hibbard, M.D., stated by affidavit dated April 12, 1993, that he was a retired physician who had specialized in psychiatric care. He affirmed that he had examined the file of Patient A and that following her discharge from St. Mary's Hospital on November 12, 1976, that he had become her treating physician at the Hibbard Psychiatric Clinic. Dr. Hibbard further affirmed that "To the best of [his] knowledge, [Patient A] was

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never a patient of Dr. Webb subsequent to the November 12, 1976, date." Dr. Hibbard stated that during the time he was Patient A's treating physician that he had no professional association with Dr. Webb. Dr. Hibbard also stated that primary therapy for Patient A was provided by a therapist on his staff. (Res. Ex. F)

11. On or about September 20, 1999, Dr. Webb signed his application for Reappointment to the Medical Staff of River Park Hospital, Huntington, West Virginia. That application contains a question which reads: "Has your license to practice medicine in any jurisdiction or your DEA Registration been limited, suspended, reduced, or revoked (voluntarily or involuntarily) or is there any investigation or pending challenges to your license or DEA registration?" Dr. Webb answered this question "Yes." The application requires that the applicant attach a separate sheet explaining a yes answer to this question. The copy of the application contained in Respondent's Exhibit D does not include this explanation sheet. At hearing Dr. Webb explained that this application illustrates his consistency and absence of any intent to deceive in answering questions about the West Virginia complaints. (Tr. 16; Res. Ex. D)

FINDINGS OF FACT

1. On or about April 4, 1994, Deleno H. Webb, III, M.D., signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Webb responded, "No."

In fact, on or about November 5, 1993, the West Virginia Board of Medicine [West Virginia Board] had issued to Dr. Webb a Complaint and Notice of Hearing.

2. On or about March 14, 1996, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Webb responded, "No."

In fact, on or about August 12, 1994, the West Virginia Board issued to Dr. Webb a Complaint and Notice of Hearing.

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3. On or about April 5, 1999, Dr. Webb signed the application for renewal of his certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . . 5.) Except for actions taken by this board, been notified of any investigation concerning you by, or, been notified of, any charges, allegations, or complaints filed against you, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license? This includes denial, limitation, restriction, suspension, revocation, censure, reprimand or fine," Dr. Webb responded, "No."

In fact, in December 1998, two complaints alleging that Dr. Webb failed to release medical records upon request were filed against him with the West Virginia Board by patients. The West Virginia Board began investigation of those complaints and in February 1999, Dr. Webb filed responses to those complaints.

4. On or about July 21, 1999, the West Virginia Board entered an Order which revoked Dr. Webb's license to practice medicine and surgery in West Virginia, stayed such revocation, and placed his license on probation for a period of five years.

The West Virginia Board Order was based upon findings including that Dr. Webb engaged in a sexual relationship with an individual prior to March 1977 "at a time when she was a patient and a very young disturbed woman"; that after transferring this individual's care to another psychiatrist in March 1977, Dr. Webb continued to care for and treat her, including prescribing potentially addictive drugs to her, giving numerous orders at hospitals regarding her care, and otherwise taking responsibility for her care, through 1983; and that Dr. Webb admitted to having sex and engaging in a sexual relationship with this individual, during the lengthy period of time from March 1977 through 1983.

5. Dr. Webb answered "Yes" to questions posed by the Kentucky Board and various health care agencies when those questions made reference to being under "investigation" by a licensing board.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Deleno H. Webb, III, M.D., as described in Findings of Fact 1 and 2, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect prior to March 9, 1999.)

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2. The acts, conduct, and/or omissions of Dr. Webb, as set forth in Findings of Fact 1 and 2, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code (as in effect prior to March 9, 1999). Section 4731.22(B)(5), Ohio Revised Code, provides as follows:

As used in this division, 'false, fraudulent, deceptive, or misleading' means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonability will cause an ordinarily prudent person to misunderstand or be deceived.

R.C. 4731.22(B)(5).. Clearly, Dr. Webb's denial that any disciplinary action had been taken or initiated against him by any state licensing board other than the State Medical Board of Ohio?" in his application for renewal of his license was a misrepresentation of fact, and was likely to cause an ordinarily prudent person to be deceived. Such a misrepresentation, even if unintentional, violates Ohio law.

3. Dr. Webb's acts, conduct, and/or omissions as described in Findings of Fact 3, individually and/or collectively, constitute "[f]raud, misrepresentation or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect on or after March 9, 1999. Based on Section 4731.22(B)(5) as cited in Conclusions of Law 2, Clearly, Dr. Webb's denial on his renewal application that disciplinary action had been initiated against him was a misrepresentation of fact, and was likely to cause an ordinarily prudent person to be deceived.
4. Dr. Webb's acts, conduct, and/or omissions as described in Findings of Fact 3, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect on or after March 9, 1999. As previously discussed in Conclusions of Law 2, Dr. Webb's denial that any disciplinary action had been taken or initiated against him by any state licensing board other than the State Medical Board of Ohio?" in his application for renewal of his license was a misrepresentation of fact, and was likely to cause an ordinarily prudent person to be deceived. Such a misrepresentation, even if unintentional, violates Ohio law.

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5. The West Virginia Board Order, as described in Findings of Fact 4, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

Deleno H. Webb, III, M.D., misrepresented facts on his Ohio renewal applications. Dr. Webb's contention that the misrepresentations were not intentional fraud is supported by the various other applications contained in the record which contain references to being "under investigation."

Sexual relations with a patient, particularly those involving a psychiatrist, are particularly serious. Nevertheless, mitigation present in this case includes: the remoteness in time of the offense, the involvement of only one patient, and the apparent confusion surrounding Patient A's status as a patient.

There are two distinct issues present in this matter. As Dr. Webb noted at hearing, the decision of the West Virginia Board is being appealed in the courts of West Virginia. However, even if the West Virginia Board Order is vacated discipline of Dr. Webb is justified by Findings of Fact 1-3 involving his misrepresentations to the Ohio Board.

Revocation of Dr. Webb's certificate would be appropriate based on the findings of the West Virginia Board or his misrepresentation on his Ohio renewal applications. As an alternative, however, the following Proposed Order is designed to offer Dr. Webb an opportunity to demonstrate that he is worthy of the public trust while ensuring that his conduct is carefully monitored.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Deleno H. Webb, III, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Webb's certificate is SUSPENDED for an indefinite period of time, but not less than one year.
2. Dr. Webb shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Webb shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
3. The Board shall not consider reinstatement of Dr. Webb's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Webb shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Webb shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
 - c. Dr. Webb shall submit documentation from the West Virginia Board of Medicine [West Virginia Board], dated no earlier than sixty days prior to his application for reinstatement, indicating that he has maintained full compliance with the West Virginia Board Order.
 - d. In the event that Dr. Webb has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
4. Upon reinstatement, Dr. Webb's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

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- a. Dr. Webb shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
- b. In the event that Dr. Webb should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Webb must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
- c. Dr. Webb shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective and upon his request for termination of the probationary period, or as otherwise requested by the Board.
- d. Dr. Webb shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. At the time he submits his quarterly declarations, Dr. Webb shall also submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the West Virginia Board. Moreover, Dr. Webb shall cause to be submitted to the Board copies of any reports that he submits to the West Virginia Board whenever the New Jersey or Pennsylvania Board requires such submission.
- f. Dr. Webb shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by the West Virginia Board.
- g. Dr. Webb shall provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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h. Dr. Webb shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should Dr. Webb commence practice in Ohio, the Board may place his certificate under additional probationary terms, conditions, or limitations, including the following:

i. Dr. Webb shall submit for the Board's prior approval the name of a monitoring physician. Dr. Webb shall further submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment where Dr. Webb's activities will be directly supervised and overseen by the monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Webb and provide the Board with reports on Dr. Webb's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Webb's quarterly declaration. It is Dr. Webb's responsibility to ensure that the reports are timely submitted.

Dr. Webb shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Webb shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Webb shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Webb shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

ii. Dr. Webb shall appear in person for interviews before the full Board or its designated representative within three months of the commencement of practice in Ohio, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification

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of scheduled appearances, it is Dr. Webb's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Webb shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- iii. Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where Dr. Webb has privileges or appointments. Further, Dr. Webb shall provide a copy of this Order by certified mail to all employers or entities with which he applies or contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Webb applies for or obtains privileges or appointments. Further, Dr. Webb shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- iv. If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Webb shall cease practicing medicine in Ohio beginning the day following Dr. Webb's receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice of medicine in violation of Section 4731.41, 4731, Ohio Revised Code.
- i. If Dr. Webb violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- j. If Dr. Webb violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- k. Periods of time during which Dr. Webb's certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

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5. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Webb's certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF APRIL 5, 2000

REPORTS AND RECOMMENDATIONS

Dr. Egner announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Egner asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Steven P. Andrei, L.M.T.; Chowdhury F. Azam, M.D.; John C. Stare, P.A.; and Deleno H. Webb, III, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Egner	- aye

Dr. Egner asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Egner	- aye

In accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Egner stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

Dr. Egner noted that Dr. Musa has requested and been granted a postponement of the deliberation of his case until 4:00 p.m. today.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

DELENO H. WEBB, III, M.D.

.....

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DELENO H. WEBB, III, M.D. DR. STEINBERGH SECONDED THE MOTION.

.....

A vote was taken on Dr. Agresta's motion to approve and confirm:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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September 8, 1999

Deleno H. Webb, III, M.D.
1326 Sixth Avenue
Huntington, West Virginia 25701

Dear Doctor Webb:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about April 4, 1994, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . .5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" you responded, "No."

In fact, on or about November 5, 1993, the West Virginia Board of Medicine (hereinafter "West Virginia Board") issued to you a Complaint and Notice of Hearing.

- (2) On or about March 14, 1996, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . .5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" you responded, "No."

In fact, on or about August 12, 1994, the West Virginia Board issued to you a Complaint and Notice of Hearing.

Mailed 9/9/99

- (3) On or about April 5, 1999, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect. In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . .5.) Except for actions taken by this board, been notified of any investigation concerning you by, or, been notified of, any charges, allegations, or complaints filed against you, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license? This includes denial, limitation, restriction, suspension, revocation, censure, reprimand or fine," you responded, "No."

In fact, in December 1998, two complaints alleging that you failed to release medical records upon request were filed against you with the West Virginia Board by patients; the West Virginia Board began investigation of those complaints; and in February 1999, you filed responses to those complaints.

- (4) On or about July 21, 1999, the West Virginia Board entered an Order which revoked your license to practice medicine and surgery in West Virginia, stayed such revocation, and placed your license in probationary status for a period of five (5) years.

The West Virginia Board Order is based upon findings including that you engaged in a sexual relationship with an individual prior to March 1977 "at a time when she was a patient and a very young disturbed woman"; that after transferring this individual's care to another psychiatrist in March 1977, you continued to care for and treat her, including prescribing potentially addictive drugs to her, giving numerous orders at hospitals regarding her care, and otherwise taking responsibility for her care, through 1983; and that you admitted to having sex and engaging in a sexual relationship with this individual, during the lengthy period of time from March 1977 through 1983.

A copy of the West Virginia Board Order is attached hereto and fully incorporated herein.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "[f]raud, misrepresentation or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect on or after March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect on or after March 9, 1999.

Further, the West Virginia Board Order, as alleged in paragraph (4) above, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice

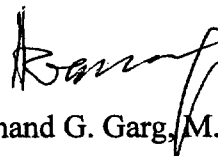
Deleno H. Webb, III, M.D.

Page 4

and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 034
RETURN RECEIPT REQUESTED

cc: Rudolph DiTrapano, Esq.
CERTIFIED MAIL #Z395 591 053
RETURN RECEIPT REQUESTED

cc: Sean P. McGinley, Esq.
CERTIFIED MAIL #Z395 591 054
RETURN RECEIPT REQUESTED

Pursuant to Section 4731.22(F), Ohio Revised Code, patient name redacted to protect patient confidentiality.



R. Curtis Arnold, D.P.M.
South Charleston

Rev. Richard Bowyer
Fairmont

A. Paul Brooks, Jr., M.D.
Parkersburg

Ahmed D. Faheem, M.D.
Beckley

Mr. Roger Foster
Morgantown

Angelo N. Georges, M.D.
Wheeling

State of West Virginia

West Virginia Board of Medicine
101 Dee Drive
Charleston, WV 25311
Telephone (304) 558-2921
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Phillip B. Mathias, M.D.
Glen Dale

Mr. Jewel F. McClanahan
Nitro

Carmen R. Rexrode, M.D.
Moorefield

Lee Elliott Smith, M.D.
Princeton

S. Kenneth Wolfe, M.D.
Huntington

Kenneth Dean Wright, P.A.-C.
Huntington

CERTIFICATION

I DO HEREBY CERTIFY that the attached records of the West Virginia Board of Medicine in the case West Virginia Board of Medicine, Petitioner, v. Deleno H. Webb, M.D., Respondent, are true and accurate copies of the documents as maintained by the West Virginia Board of Medicine.

Ronald D. Walton, Executive Director
West Virginia Board of Medicine

OHIO STATE MEDICAL BOARD

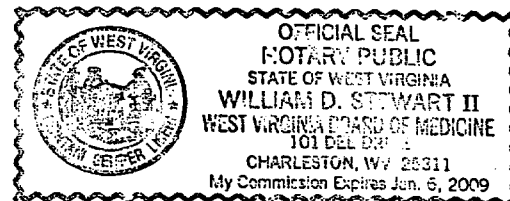
JUL 26 1999

STATE OF WEST VIRGINIA COUNTY OF KANAWHA

The foregoing instrument was acknowledged before me this 21st day of July, 1999, by Ronald D. Walton, Executive Director, West Virginia Board of Medicine.

My commission expires January 6, 2009.

Notary Public



PRESIDENT
Sarjit Singh, M.D.
Weirton

VICE PRESIDENT
Leonard Simmons, D.P.M.
Fairmont

SECRETARY
Henry G. Taylor, M.D., M.P.H.
Charleston

COUNSEL
Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTOR
Ronald D. Walton
Charleston

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE
WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

DELENO H. WEBB, M.D.

Respondent.

ORDER

Came the Petitioner, the West Virginia Board of Medicine ("Board"), by its counsel, Deborah Lewis Rodecker, and came the Respondent, Deleno H. Webb, M.D., in person and by his counsel Rudolph DiTrapano and Sean P. McGinley, before Hearing Examiner Ray E. Ratliff, Jr., in hearings held on December 17, 1998, and on December 18, 1998, in the conference room of the Board offices at 101 Dee Drive, Charleston, West Virginia, and on March 24, 1999, in the offices of Jackson and Associates, 606 Virginia Street East, Charleston, West Virginia.

OHIO STATE MEDICAL BOARD

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Following the hearings of December 17, 1998, and December 18, 1998, and March 24, 1999, this matter was heard by the Board on Monday, July 12, 1999, in its regularly scheduled meeting in Board offices at 101 Dee Drive, Charleston West Virginia, upon pleadings and proceedings of record set forth within the "Recommended Findings of Fact and Conclusions of Law and Recommended Decision of the Hearing Examiner" ("Recommended Decision"), served on June 25, 1999, and incorporated herein and attached hereto as Exhibit A, which the Board hereby adopts as modified herein.

Prior to the July 12, 1999, Board meeting, pursuant to 11 CSR 3 12, the stenographic record of the said hearing and all exhibits and relevant pleadings including the Recommended Decision were provided to Board members for review, excepting those members who comprised the Complaint Committee at the time of its probable cause findings regarding the Respondent. In attendance at the July 12, 1999, Board meeting were Drs. Arnold, Brooks, Faheem, Georges, Mathias, Rexrode, Singh, Simmons, Smith, and Wolfe, Messrs. Foster, McClanahan, and Wright, and Rev. Bowyer. Dr. Taylor was absent. Abstaining because of a conflict of interest by virtue of their having served on the Complaint Committee were Drs. Brooks, Simmons, and Singh and Rev. Bowyer, who excused themselves from the room and did not participate in discussion of this matter. Dr. Faheem presided in the absence of Dr. Singh. Upon thorough deliberation, with a quorum present and voting, pursuant to 11 CSR 3 7, the Board reached its decision by a majority vote of ten for and one against adoption of the Recommended Decision as modified herein, Dr. Wolfe voting in opposition

Cognizant of 11 CSR 3 13.2, which provides that the Board may adopt, reject, or modify the Findings of Fact and Conclusions of Law of the Hearing Examiner, the Board hereby adopts the Findings of Fact and Conclusions of Law and Recommended Decision of the Hearing Examiner as modified as follows.

On page eight, paragraph two, to rephrase this item as a finding of fact with corresponding syntax, and for grammatical reasons, at the beginning of the sentence, strike out the words "The record reflects"; before the name " , " insert the honorific "Ms.," and; after the word "Rehabilitation," strike out the word "which," so that the paragraph reads as follows:

"2. A letter dated February 1, 1977, from Dr. Webb regarding Ms. [redacted] to the Division of Vocational Rehabilitation refers to "my patient Ms. [redacted]," requesting authorization for continued psychotherapy. (Bd. Ex. 10B)"

On page nine, paragraph three, to rephrase this item as a finding of fact with corresponding syntax, at the beginning of the sentence, strike out the words "The record reflects"; after the word "regarding," insert the honorific "Ms."; after the word "Rehabilitation," strike out the word "stating" and insert in lieu thereof the word "stated," and; thereafter, strike out the words "in pertinent part," so that the paragraph reads as follows:

"3. A March 24, 1997, letter from Dr. Webb regarding Ms. [redacted] to the Division of Vocational Rehabilitation, stated 'this appears to be an appropriate time to transfer [Ms. [redacted]] to [Dr. Hibbard].' (Bd. Ex. 10B)"

On page nine, paragraph four, to rephrase this item as a finding of fact consistent with the record and with corresponding syntax, strike out the first sentence and insert in lieu thereof the following, "At age seventeen, Ms. [redacted] became Dr. Webb's patient (Tr. P. 90, Bd. Ex. 10, p. 6, and see Bd. Ex. 10A), at which time she was a 'very young, impressionable woman and a very disturbed woman,' based on her medical records" so that the paragraph reads as follows:

"4. At age seventeen, Ms. [redacted] became Dr. Webb's patient (Tr. P. 90, Bd. Ex. 10, p. 6, and see Bd. Ex. 10A), at which time she was a 'very young, impressionable woman and a very disturbed woman,' based on her medical records. She was depressed, with anxiety attacks and suicidal impulses, feeling crazy much of the time, 'having dissociative phenomenon. . .she does not recognize herself in the mirror.' (Tr., pp. 216-220, and see Bd. Ex. 10A)"

On page twenty-one, paragraph eight, to rephrase this item as a conclusion of law with corresponding syntax, and to clarify that this item answers the question stated in Issue #1 on page five, at the beginning of the sentence, strike out the words "Clear" through "that," and insert in lieu thereof the words "By clear and convincing evidence, the," and at the end of the

sentence, add a comma and the words "and thus constitutes a violation of W.Va. Code §30-3-6 prior to 1980" so that the paragraph reads as follows:

"8. By clear and convincing evidence, the Respondent's conduct prior to 1980, of engaging in a sexual relationship with his patient Ms. , constituted gross immorality as measured by the standards of the profession at that time, and thus constitutes a violation of W.Va. Code §30-3-6 prior to 1980."

On page twenty-three, at footnote three, to clarify and expand upon the meaning of the footnote, to distinguish the present case from the cited case, and to correct an erroneous citation, delete the existing footnote and insert in lieu thereof the following:

"³ In Bass v. Barksdale, 671 S.W. 2d 476 (Tenn. App. 1984), on a single occasion, after a nurse told him that Dr. S. had referred the patient to a public health department and had prescribed medication by telephone, Dr. Q. signed paper prescription forms bearing the written words 'per telephone order of Dr. S.' In that case, Dr. Q. never saw or examined the patient, neither Dr. S. nor the patient ever contacted Dr. Q. to request Dr. Q's medical services, and no contractual relationship existed between Dr. Q. and the patient. Personal contact and request for medical services resulting in a contractual relationship were elements required for establishment of a doctor-patient relationship according to controlling law in Bass v. Barksdale. In that case, the court ruled that no doctor-patient relationship was established. The present case is distinguished in that Dr. Webb had numerous personal contacts with Ms. , physically examined her and treated her, and wrote prescriptions which he himself originated on more than one occasion. The present case is further distinguished in that West Virginia law does not require the same elements as Tennessee law to establish a doctor-patient relationship, and Tennessee law is not controlling in West Virginia."

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On page twenty-four, paragraph eleven, to rephrase this item as a conclusion of law with corresponding syntax, and to correct an erroneous citation, before the words "clear and convincing," insert the word "By"; thereafter, strike out the words "expert testimony exists in the record that" and insert in lieu thereof the words "evidence, the," and; after the words "violation of," insert the words and symbol "W.Va. Code §," so that the paragraph reads as follows:

"11. By clear and convincing evidence, the Respondent's conduct subsequent to 1980, of engaging in a sexual relationship with his patient, constitutes a violation of W.Va. Code §30-3-14(c)(8), (9), and (17) and 11 CSR 1A 12.1(e), (j), (r), (s), and (x)."

On page twenty-six, paragraph sixteen, because the Board does not regard the existence of a prior standard as a mitigating factor, strike out the first sentence, and, in the second sentence, after the words "less specific directive," strike out the words "even though," so that the paragraph reads as follows:

"16. The law governing Dr. Webb's subject conduct, prior to 1980, at former W.Va. Code §30-3-6, providing that a physician shall not engage in 'gross immorality' is a less specific directive, measured by the standards of the profession at the time, than the law subsequent to 1980 which provides more specific directives to a physician to not engage in a sexual relationship with a patient. A significant portion of Dr. Webb's sexual relationship with his patient occurred prior to 1980."

On page twenty-six, paragraph seventeen, because the Board does not regard the existence of a prior standard as a mitigating factor, in the first sentence, after the word "evidence," insert the word "and," and after the word "sanctions," strike out the words "and" through "above," and; because reference to the cited cases is inappropriate in that the cited cases resulted in Consent Orders, representing a type and degree of negotiation and compromise not found in the present case, and because a Consent Order generally involves an acceptance of responsibility on the part of the disciplined physician that is not found in the present case, and because the present Order is not a Consent Order, strike out the second sentence in its entirety, so that the paragraph reads as follows:

"17. After a review of all the evidence and the available sanctions, it is appropriate, essential, lawful, and in the public interest under all the circumstances to revoke the license of Dr. Webb effective the date of entry of the Order but immediately stay such revocation and place the license of Dr. Webb in a probationary status for a period of five (5) years, subject to Dr. Webb's compliance with certain conditions."

On pages twenty-seven through twenty-nine, in order to clarify certain procedural aspects of the recommended sanctions, to clarify responsibilities of the Respondent in relation to the sanctions, to clarify requirements for documentation of compliance with certain sanctions, to clarify substantive requirements in relation to costs, and to correct erroneous references to a "Consent Order," strike out all of pages twenty-seven through twenty-nine, and insert in lieu thereof the following Decision.

Decision

Based upon the Findings of Fact and Conclusions of Law and Recommended Decision of the Hearing Examiner, herein adopted as modified, and in the interest of public safety, and pursuant to the W.Va. Code §30-3-14(i) and pursuant to 11 CSR 1A 12.3, the Board hereby **ORDERS** as follows:

1. Effective upon entry of this Order, the license to practice medicine and surgery in the State of West Virginia heretofore issued to the Respondent Deleno H. Webb, M.D., License No. 9413, is **REVOKED**.

2. Effective immediately upon REVOCATION, the REVOCATION hereinafter imposed shall be **STAYED**, which STAY is subject to immediate dissolution and termination upon the Board's determination of the Respondent's failure to comply with any other term or condition of this Order.

3. Effective immediately upon STAY of REVOCATION, the Respondent's license shall be placed in **PROBATIONARY STATUS** for a period of **FIVE (5) YEARS**, which **PROBATIONARY STATUS** is subject to immediate dissolution and termination upon the

OHIO STATE MEDICAL BOARD
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Board's determination of the Respondent's failure to comply with any other term or condition of this Order.

4. Throughout the duration of the PROBATIONARY STATUS, the Respondent may practice medicine and surgery only under the supervision of a psychiatrist who shall be so designated by the Board, which person shall file an annual statement with the Board beginning on January 1, 2000, attesting to the Respondent's health and well being. It is the responsibility of the Respondent to initiate with the Board the selection process to designate the supervising psychiatrist. It is the responsibility of the Respondent to insure that the annual report of the supervising psychiatrist is timely submitted to the Board.

5. Within thirty (30) days of entry of this Order, the Respondent shall review the American Medical Association ("AMA") Code of Medical Ethics, the AMA Current Opinions, and the "Sexual Misconduct Statement" adopted by the West Virginia Board of Medicine in 1993, and shall submit to the Board his verified affidavit attesting to same.

6. Within ninety (90) days of entry of this Order, the Respondent shall, at his own expense, attend and successfully complete an ethics course, previously approved by the Board, which course shall include boundary issues with patients, and shall submit to the Board his verified affidavit attesting to same along with documentation of attendance and successful completion issued by the course sponsor.

7. The Respondent shall comply with all provisions of the West Virginia Medical Practice Act and the rules established thereunder.

8. The Respondent may not engage in a sexual relationship with any patient.

9. Within five (5) days of entry of this Order, the Respondent shall provide a copy of this Order to any health care facility where he is employed, where he works, or where he enjoys

privileges of any kind, and shall, throughout the PROBATIONARY STATUS, immediately upon seeking or being recruited to practice medicine with any employer or health care or medical facility, shall provide a copy of this Order to any such employer or health care or medical facility.

10. The Respondent shall pay the administrative costs of all proceedings in this matter, beginning with initiation of the first investigation and complaint in 1993, including but not limited to fees of Investigators, Hearing Examiners, Court Reporters, Expert Witnesses, and Post-Hearing Legal Consultants, within thirty (30) days after the Board provides to the Respondent a statement of costs.

11. If the Respondent fails to comply with any term or condition of this Order, the STAY shall be dissolved and terminated, and the REVOCATION shall be in effect immediately upon the Board's determination of the Respondent's noncompliance and written notice thereof served upon the Respondent.

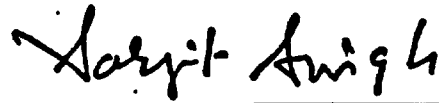
12. Upon successful completion of the PROBATIONARY STATUS period, if and when the Board determines that the Respondent has met all provisions of this Order, the Respondent's license to practice medicine and surgery in the state of West Virginia shall be reinstated. It is the responsibility of the Respondent to initiate reinstatement proceedings with the Board.

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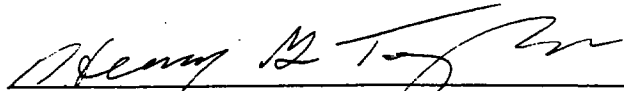
The foregoing Order in the matter styled West Virginia Board of Medicine v. Deleno H. Webb, M.D., was:

ENTERED this 21st day of July, 1999.

WEST VIRGINIA BOARD OF MEDICINE



SARJIT SINGH, M.D., President



HENRY G. TAYLOR, M.D., M.P.H., Secretary

OHIO STATE MEDICAL BOARD
JUL 26 1999

CERTIFICATE OF SERVICE

I, SUSAN K. CONNER, post-hearing legal advisor to the West Virginia Board of Medicine, do hereby certify that service of the foregoing "Order" has been made upon parties and counsel of record herein by hand delivery or by forwarding a true copy thereof in an envelope deposited in the regular course of the United States mail, with postage prepaid, addressed as follows:

Hand Delivery To:

WV Board of Medicine
101 Dee Drive
Charleston WV 25311

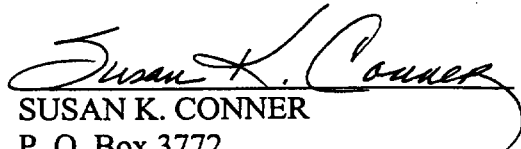
Deborah Lewis Rodecker
WV Board of Medicine
101 Dee Drive
Charleston WV 25311

Certified Mail To, & Hand Delivery To:

Deleno H. Webb, M.D.
1326 6th Avenue
Huntington WV 25701

Rudolph DiTrapano
Sean P. McGinley
604 Virginia Street East
Charleston WV 25301

on this, the 21st day of July, 1999.


SUSAN K. CONNER
P. O. Box 3772
Charleston WV 25337-3772
(304) 345-3249 FAX 345-6644

OHIO STATE MEDICAL BOARD
JUL 26 1999

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

DELENO H. WEBB, M.D.,

Respondent.

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND RECOMMENDED DECISION OF THE HEARING EXAMINER

The Petitioner, the West Virginia Board of Medicine by its counsel, Deborah Rodecker, Esq., and the Respondent Deleno H. Webb, M.D., in person and by his counsel Rudolph L. DiTrapano and Sean P. McGinley, appeared before Hearing Examiner Ray E. Ratliff, Jr., in hearings held on December 17, 1998 and December 18, 1998, in the conference room of the West Virginia Board of Medicine ("Board") offices at 101 Dee Drive, Charleston, West Virginia, and on March 24, 1999 at the offices of Jackson and Associates, 606 Virginia Street, East, Charleston, West Virginia.¹

OHIO STATE MEDICAL BOARD
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PROCEDURAL HISTORY

This matter came on for hearing upon: the Petitioner's

¹A deposition was also held on March 24, 1999, for the purpose of taking the deposition of Dr. Robert A. Granacher, the Respondent's expert witness.

excised Complaint and Notice, filed on September 15, 1998. At the hearing on this matter, the Petitioner presented as its witnesses Leslie Higginbotham, Seymorn L. Halleck, M.D., Nancy Hill and Deleno Webb, M.D., as an adverse witness. Respondent presented as his witness Robert A. Granacher, M.D. who testified by sworn deposition, and that testimony was admitted in the record as Respondent's Exhibit No. 2. The Respondent also testified on his own behalf. Numerous exhibits were admitted in evidence, as set forth in the record. The parties submitted argument, including proposed Findings of Facts and Conclusions of Law.

Procedural Background

The petitioner West Virginia Board of Medicine ("the Board"), filed charges against the respondent Dr. H. Webb ("Dr. Webb"), a Huntington, West Virginia, physician, in a Complaint filed November 5, 1993. An Answer was filed by Respondent.

OHIO STATE MEDICAL BOARD
JULY 26 1999

Dr. Webb applied for a writ of prohibition against the Board in the Circuit Court of Kanawha County. On September 16, 1994, the circuit court ordered the Board to consider "what, if any, impact the doctrine of laches will have on the allegations" against Dr. Webb. The circuit court also ordered that "the Board shall assume that the doctrine of laches applies and make initial determinations in both cases as to what prejudice, if any, has

occurred and whether these proceedings should be barred as a result." The circuit court's order further declared that any misconduct in which Dr. Webb engaged prior to the 1980 enactment of W.Va. Code, §30-3-1 et seq. should be governed by the disciplinary provisions of the law in place at the time of the alleged misconduct.

Accordingly, the Board excised its complaints and notices to meet the circuit court's order. By order dated January 18, 1995, the Board scheduled a hearing before this Hearing Examiner so the Board could "consider the evidence and make initial determinations as to what prejudice, if any, has occurred, and whether further proceedings should be barred as a result."

At the initial "laches" hearing, this Hearing Examiner took evidence on the issue of laches, recommended that the Board go forward in the matter, and that the Board do so forward in another matter not herein pertinent.

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In May 1995, the Board entered an order accepting this Hearing Examiner's recommendation as to the matter herein, and thereafter the Board scheduled a hearing on the merits of the complaint against Dr. Webb. Dr. Webb again applied to the Circuit Court of Kanawha County for a writ of prohibition against the Board. With no ruling forthcoming from the circuit court, in August 1996, the Board applied to the Supreme Court of Appeals of West Virginia for the issuance of a writ of mandamus requiring the circuit court to rule on Dr. Webb's request for a writ of

prohibition. The Court issued the writ. In April 1997, the circuit court ruled that the Board was not permitted to hold a hearing on the merits of the complaints against Dr. Webb.

The Board appealed from this ruling by the Circuit Court of Kanawha County, to the Supreme Court of Appeals of West Virginia. The Court upheld in part and reversed in part the decision of the Circuit Court, ruling inter alia that the Board could proceed on the merits of the case against Dr. Webb, charging him with having a sexual relationship with a patient, and remanded the case for further proceedings on the merits. State ex rel. Deleno H. Webb, M.D. v. West Virginia Board of Medicine.

An excised Complaint and Notice of Hearing was served by Petitioner on September 15, 1998.

This proceeding was conducted by the Hearing Examiner in accordance therewith.

OHIO STATE MEDICAL BOARD

JUL 26 1999

MOTIONS

Respondent's Motion to Recuse is denied pursuant to the rules of the Board, 11 CSR 1A, the practice of the Board, and Serian v. State, 297 S.E.2d 889, (W.Va. 1982) citing Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456 (1975).

Respondent's Motion to Recuse and Stay, insofar as it raises questions as to the constitutionality of the underlying statute governing the West Virginia Board of Medicine, is denied.

The provisions of W.Va. Code §30-3-1 et seq. are presumed to be constitutional and the Board as an administrative agency governed thereby, has no authority to rule on the constitutionality of a statute. Lingamfelter v. Brown, 52 S.E.2d 687 (W.Va. 1949); Sims v. County Ct. of Kanawha County, 61 S.E.2d 849 (W.Va. 1950); LaFollette v. City of Fairmont, 76 S.E.2d 572 (W.Va. 1953); Charleston Transit Co. v. Condry, 86 S.E.2d 391 (W.Va. 1955); McMillion v. Stahl, 89 S.E.2d 693 (W.Va. 1955)

All rulings rendered at the aforesaid hearings or otherwise rendered on motions filed in this action are hereby affirmed and all other motions made in this proceeding by either of the parties which were not otherwise ruled upon by the Hearing Examiner are hereby denied and rejected.

ISSUES

1. Whether Dr. Webb's alleged conduct, insofar as it occurred prior to 1980, constitutes a violation of former West Virginia Code §30-3-6, which provides as follows:

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"The medical licensing board may refuse to grant a certificate or license to a person... known to indulge in gross immorality... and may suspend or revoke a certificate for like cause."

2. Whether Dr. Webb's alleged conduct, insofar as it occurred after 1980, constitutes a violation of West Virginia Code §30-3-14(c) (8), (9) and (17), and the Board regulations at 11 CSR 1A 12.1(e), (j), (r), (s) and (x):

The board... may discipline a physician licensed... in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:....

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity.

(9) Making a deceptive, untrue or fraudulent representative in the practice of medicine and surgery.

(17) Violating any provisions of this article or a rule or order of the board,...

C. 11 CSR 1A 12.1(e), (j), (r), (s) and (x):

e. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof;

j. Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical... practice, or the ethics of the medical... profession, irrespective of whether or not a patient is injured thereby, or has committed any act contrary to honesty, justice, good morals, whether the same is committed in the course of his or her practice or otherwise, and whether committed within or without this State;

OHIO STATE MEDICAL BOARD
JUL 26 1999

r. ...Exercised influence within a patient-physician ...relationship for purpose of engaging a patient in sexual activity;

s. made deceptive, untrue or fraudulent representations in the practice of medicine....;

x. Engaged in malpractice or failed to practice medicine ...with that level of care, skill and treatment which is recognized by a reasonable, prudent physician ...engaged in

the same or a similar specialty as being acceptable under similar conditions and circumstances;

**DISCUSSION OF CREDIBILITY OF
WITNESSES, TESTIMONY, and EXHIBITS**

The Hearing Examiner was and is satisfied that all records and documents entered as exhibits are authentic and valid and that they were entered with the proper evidentiary foundations.

The Hearing Examiner was and is satisfied that each and every witness brought on by the parties was credible and truthful with the exception noted below. Neither the demeanor of any witness nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive with the exception noted below. No evidence suggested any personal gain to be achieved by any witness as a result of testifying, with the obvious exception of Dr. Webb.

OHIO STATE MEDICAL BOARD
JUL 26 1999

Dr. Webb's testimony was sometimes confusing and occasionally inconsistent with his earlier testimony. Part of the confusion could be due to the multiplicity of hearings and proceedings that have apparently occurred since the early 1990's arising out of Dr. Webb's alleged subject conduct herein set forth. However, Dr. Webb's testimony was not uniformly credible.

After reviewing the record and the exhibits admitted into evidence and matters of which the Hearing Examiner took judicial notice during the proceedings, assessing the credibility of the

witnesses, and weighing the evidence in consideration of the same, this Hearing Examiner makes the following findings of fact and conclusions of law. To the extent that these findings of fact and conclusions of law are consistent with any proposed findings of fact and conclusions of law submitted by a party, the same are hereby adopted by the Hearing Examiner, and conversely, to the extent that the same are inconsistent with these findings and conclusions, they are rejected. To the extent that the testimony of any witness is not in accord with these findings and conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed and submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

FINDINGS OF FACT

1. Deleno H. Webb, M.D., ("Dr. Webb") is a psychiatrist who has held a West Virginia license to practice medicine in the State of West Virginia since 1971. (Complaint and Notice of Hearing; Bd. Ex. 12; Bd. Ex. 10, p. 15)

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2. The record reflects a letter dated ~~JUL 26 1977~~ ^{JUL 26 1977} July 1, 1977, from Dr. Webb regarding to the Division of Vocational Rehabilitation which refers to "my patient Ms. ,", requesting authorization for continued psychotherapy. (Bd. Ex. 10B)

3. The record reflects a March 24, 1977 letter from Dr. Webb regarding to the Division of Vocational Rehabilitation, stating in pertinent part "this appears to be an appropriate time to transfer [Ms.] to [Dr. Hibbard]. (Bd. Ex. 10B)

4. At a young age, became a psychiatric patient of Dr. Webb's. (Tr. p.90, Bd. Ex. 10, p. 6, and see Bd. Ex. 10A). Whatever Ms. age, she was a "very young, impressionable woman and a very disturbed woman," based on her medical records at the time of Dr. Webb's first contact with Ms. . She was depressed, with anxiety attacks and suicidal impulses, feeling crazy much of the time, "having dissociative phenomenon... she does not recognize herself in the mirror." (Tr., pp. 216-220, and see Bd. Ex. 10A)

5. Michele Young, a psychotherapist and clinical social worker testified in her May, 1995 deposition that she worked for Dr. Webb beginning in 1976 on the therapy and continuing through 1992. Her opinion was that the sexual relationship between Ms. and Dr. Webb began prior to March 1977 when he wrote the letter transferring her care to Dr. Hillard, and Young testified that the March, 1977, letter transferring Ms. Deskins' care from Dr. Webb was precipitated by Ms. Young because of her concern about an existing sexual relationship between them. (Bd. Ex. 2, pp. 4-15, 19-20, 28, 72-84, 255-268)

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6. Ms. Young's testimony, as to when the sexual

relationship commenced between Dr. Webb and Ms. is asserted by the counsel for the board to be directly relevant to Dr. Webb's claim that the sexual relationship he commenced was with a "former" patient in July, 1977. (See Petitioner's Proposed Finding of Fact number 51, page 12; Proposed Findings of Fact and Conclusions of Law). Ms. Young's testimony that Dr. Webb's sexual relationship commenced with Ms. prior to March, 1977, is found by the Hearing Examiner to be directly relevant to contradict Dr. Webb's claim that the sexual relationship he commenced with was with a "former" patient in July, 1977. Such testimony is found to be admissible under Rule 803(4), W.Va. R. Evid., which allows the admission in evidence of otherwise hearsay statements made to Young by as a part of medical history for the purposes of medical diagnosis and treatment.

7. The Board alleged in its Complaint that Dr. Webb was engaged in a sexual relationship and the treating psychiatrist for patient from an earlier date in time than 1977, namely as of September 1975, at which time was age 17, which allegation has been denied by Dr. Webb. There is simply insufficient proof of record to establish by clear and convincing evidence that was age 17 at the time of the commencement of the sexual relationship.¹ There is clear and convincing proof that

¹Any prior finding that was age 17 at the time Dr. Webb engaged in a sexual relationship with his patient was limited to a finding based on the prima facie evidence in the laches hearing. See State ex rel. Deleno H. Webb, M.D. v. West Virginia Board of Medicine at footnote 4. The finding herein is based upon the record evidence in the merits of the case.

Dr. Webb engaged in a sexual relationship with [redacted] prior to March, 1977, at a time when she was a patient and a very young disturbed woman.

8. After the transfer of Ms. [redacted] care to Dr. Hibbard occurred in March, 1977, Dr. Webb repeatedly continued to care for and treat [redacted], both as an inpatient and as an outpatient, including prescribing potentially addictive drugs to her, through 1983. (Bd. Ex. 1; Ex. A to Bd. Ex. 10, "Documents Reflecting Psychiatrist/Patient Relationship between Dr. Webb and [redacted]", Bd. Ex. 10, pp. 45-60; Tr.p. 187)

9. During the lengthy period of time from March, 1977 when Dr. Webb transferred [redacted] care to Dr. Hibbard, through 1983, Dr. Webb not only prescribed medicine for [redacted] but gave numerous orders at hospitals regarding her care and otherwise took responsibility for her medical care. (Bd. Ex. 1; Ex. A to Bd. Ex. 10; Bd. Ex. 10, pages 45-60; Tr. page 187)

10. During the lengthy period of time from March, 1977 through 1983, Dr. Webb has admitted to having sex and engaging in a sexual relationship with [redacted]. (Tr. 109-112)

11. Robert Philip Granacher, M.D., a Kentucky psychiatrist, testified in Dr. Webb's behalf after reviewing the Board's Complaint and Notice of Hearing and transcript of the administrative hearing in December, 1998. (Deposition Tr. pp. 3-10, 33, and see Deposition Ex. 1)

12. Dr. Granacher testified "based on the information I

have reviewed, my opinion is that Dr. Webb did not violate what he is alleged to have violated with regard to having sex with a patient". (Dep. Tr. pp. 10-11)

13. Dr. Granacher testified "based upon Dr. Webb's testimony..." that he did not agree that Dr. Webb was being deceptive or fraudulent when he began his sexual relationship with Ms. and that what Dr. Webb had done was within ethical guidelines. (Dep. Tr. pp. 21-22)

14. Dr. Granacher further testified, based on the premise that the evidence that Dr. Webb testified to is accurate, Dr. Webb did not violate any ethical rule or standard... "even if we applied today's standards." (Deposition Tr. p. 31)

15. Dr. Granacher testified he never received or reviewed Dr. Webb's deposition in the civil case _____ v. Webb et al, Civil Action No. 94-C-471 or reviewed any of the medical or hospital records on Ms. , all at Bd. Ex. 10. (Dep. tr. pp. 33-34, 43)

16. Dr. Granacher testified that when Dr. Webb wrote prescriptions for Ms. and made notes in her chart after her care had been transferred that he "technically, of course, is treating her, but that there is no doctor-patient relationship. Just like if I write a prescription for my next door neighbor, yeah, technically I am treating my next door neighbor." I wrote a pharmaceutical prescription, but I didn't examine her. I don't have a doctor/patient relationship..." (Deposition Tr. pp. 39-41)

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17. Dr. Granacher's testimony, while credible, is found to be limited as set forth in findings of fact 10-15, and therefore of limited evidentiary weight.

18. Seymour Halleck, M.D., psychiatrist, testified in the Board's behalf, (Tr. pp. 174-322) based upon his review of all of the materials available in this matter, including the transcript of the prior "laches" hearing ordered by the Circuit Court of Kanawha County, and Ms. medical records. (Tr. pp. 186-187)

19. Dr. Halleck's credentials include being a senior examiner member of the Board of Examiners for the American Board of Psychiatry and Neurology. (Tr., pp. 153-159, 183-184, Bd. Ex. 13)

20. Dr. Halleck testified that, based upon his review of all the materials in the case, given Dr. Webb's admission to a sexual relationship with his patient from July of 1977 through 1982 or 1983, that in his opinion Dr. Webb's conduct was unethical, dishonorable, unprofessional, and likely to harm a member of the public. (Tr. pp. 187-188, 195)

21. Dr. Halleck testified that the ethical standards of the American Psychiatric Association, as of 1973, stated that sexual activity with a patient is unethical. (Tr., p. 189; Bd. Ex. 14)

22. Dr. Halleck testified that the revised ^{OHIO STATE MEDICAL BOARD} edition of the American Psychiatric Association ethical standards specified that sexual activity with a patient is unethical. (Tr. p. 192-193, Bd. Ex. 15)

23. Dr. Webb by counsel, repeatedly conceded that sex with a patient is unethical and grossly immoral. (See Tr. pp. 190, 193)

24. Dr. Halleck testified that, in his opinion, Dr. Webb engaged in gross immorality in having sexual relations with a patient. (Tr. p. 195)

25. Dr. Halleck testified that the basis for his determination that Ms. _____ was Dr. Webb's patient until 1982 and 1983 were the medical records maintained on Ms. _____ and that she was Dr. Webb's patient until the last prescription was written. Quoting him, "Well, it is very clear that if you write prescriptions for a patient, you are the patient's doctor. It is very clear if you put notes in the patient's chart, that you are that patient's doctor. It is very clear that when you are on call and responsible for other patients who have other doctors, that at the time you are on call, you are the doctor of every patient you are on call - you take care of. I have been on call most of my life for one reason or another. And when I am on call, I assume I am the doctor of every patient in the house. I can do things that are good for patients. I might be able to save somebody's life. I can also do things that are bad for patients. And if I do something bad for patients, I am sued for malpractice. But when I am on call, I am the doctor for those patients." (Tr. pp. 196, 227, 265-283)

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26. Dr. Halleck testified that Dr. Webb wrote

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prescriptions for on two occasions immediately after the date upon which Dr. Webb admits his first sexual encounter with Ms. occurred, the one prescription being five days and the second prescription nine days after such sexual encounter. (Tr. pp. 197, 309-314, Bd. Ex. 8, 10). Dr. Halleck testified that the two subject prescriptions were prescriptions of controlled substances. (Tr., pp. 197, 309-314, Bd. Ex. 8, 10)

27. Dr. Halleck testified that Dr. Webb used influence within his physician/patient relationship with Ms. for the purpose of engaging her in sexual activity. (Tr., p. 199)

28. Dr. Halleck testified about the "enormous power" exercised by the therapist physician in a patient/physician relationship, which is a fiduciary relationship. (Tr., pp. 199-200, 222-224)

29. Dr. Halleck supported his opinions with reference to several articles (Bd. Ex. 16-21) and which articles do support his opinions. (Tr., pp. 205, 228-234)

30. Dr. Halleck testified that in his opinion Dr. Webb engaged in malpractice because of his sexual relationship with Ms. . (Tr., p. 204)

31. Dr. Halleck testified that even if one agreed with Dr. Webb's position that he had sexual relations with a former patient, Dr. Halleck would "still find that there was malpractice... Because it was very clear to Dr. Webb that she was an extremely immature, impulsive, sick young woman. She was 17

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years old when he first started seeing her. She was 19 when he says he had sex with her for the first time. He had treated her at least in the October and November 1976 hospitalizations. And there are many notes in the November hospitalization which indicates that their relationship was chaotic, tumultuous, they had personality clashes, and he must have known this was an extremely disturbed individual who had strong transference feelings toward him. And I suspect that's what the tumultuous clashes were about. In the June [1977] hospitalization at St. Mary's... One month before he had sex with her, he makes notes in the chart to the effect that she is manipulative, that she is whinny [sic], that she is immature and has some kind of dialogue with her about the manipulation issue. So, at that point he knew or certainly should have known that he is dealing with a highly vulnerable sick person. And to move one month from that point and have sex with her whether he viewed himself as her physician or not is below the standard of care in the profession of psychiatry." (Tr., p. 319)

32. Dr. Halleck testified that Dr. Webb acted deceptively and fraudulently in pretending he was not treating physician at the time of his sexual relationship with her, and Dr. Halleck explained that the transfer of care did not separate him from being her doctor. "He continued to be her physician, and in not clarifying for her that he was still her physician while he was having sexual relationships with her, he was in that sense deceptive and fraudulent." (Tr., pp. 202-203)

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33. Dr. Halleck testified that _____ remained Dr. Webb's patient through 1982 and that she was not a "former patient" as asserted by Dr. Webb, during their sexual relationship throughout this lengthy period of time. (Tr. pp. 298-299, 315)

34. Dr. Halleck testified that in his expert opinion, 95% of the responsibility for a physician engaging in sex with a patient is the physician's responsibility. (Tr., pp. 226-227)

35. Dr. Halleck's testimony is credible and given substantially more evidentiary weight than that of Dr. Granacher, because Dr. Halleck reviewed all the pertinent records, and his testimony was based on that comprehensive review of the records, as distinguished from Dr. Granacher's limited review of the records.

36. Further Dr. Halleck's testimony is given substantially more evidentiary weight than that of Dr. Granacher because Dr. Halleck supported his opinions with applicable standards of the American Psychiatric Association and several articles from reputable journals. (Bd. Ex's 16-21)

37. Dr. Webb's testimony is found to be self serving, inconsistent, disavowing prior testimony, attempting to distance himself from responsibility for Ms. _____' care and from his relationship with her, disavowing her psychological problems, refusing to acknowledge his own letters. (Bd. Ex. 9, Bd. Ex. 10, and Tr. Vol.II, pp. 18-110). Dr. Webb is found to be less than a credible witness.

38. Ms. _____ did not testify at the hearing for the

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reasons set forth in the record. (Tr. pp. 327-341, Bd. Ex. 22)

39. Ms. did not consent to the testimony of Michele Young being taken at the hearing. A prior deposition of Ms. Young dated May, 1995, in Civil Action No. 94-C-471, Circuit Court of Cabell County, West Virginia in Ms. civil suit against Dr. Webb, was admitted in evidence (Bd. Ex. 2) in lieu of live testimony by Order dated April 22, 1999.

40. Ms. did not consent to the testimony of her treating psychiatrist, John Adams, M.D., being taken at the hearing. Prior depositions of Dr. Adams from April and June, 1995, in Civil Action No. 94-C-471, Circuit Court of Cabell County, West Virginia, were admitted in evidence (Bd. Ex. 3) in lieu of live testimony by Order dated April 22, 1999.

41. Dr. Adams testified in his 1995 deposition (Bd. Ex. 3) as to his treatment of from 1992 onward, her illness, the aggravation of her illness due to the sexual relationship with Dr. Webb, and in his opinion the harm that resulted to her under the theory of "intermittent reinforcement" (Bd. Ex. 3, pp. 197-198), which intermittent reinforcement Dr. Webb engaged in with Ms. , in his (Adams) opinion. (Tr. pp. 93-94)

42. Dr. Adam's testimony is asserted by counsel for the board to be directly relevant to the issue of harm to Ms. as a result of Dr. Webb's conduct. (See Petitioner's Proposed Finding of Fact number 54 page 13, Proposed Findings of Facts and

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Conclusions of Law). The testimony of Dr. Adams is directly relevant to prove harm to Ms. as a result of Dr. Webb's conduct. Such testimony if found to be admissible under Rule 803(4), W.Va. R. Evid., which allows the admission in evidence of hearsay statements made to Adams by as a part of medical history for the purposes of medical diagnosis and treatment.

43. This Hearing Examiner has previously found in the laches hearing on the case (see the Order in West Virginia Board of Medicine v. Deleno H. Webb, M.D.) which finding was adopted by the Board in its prior order, and which finding is re-adopted herein, that Dr. Adams testified that delay in coming forward to the Board until August, 1992, was excusable because she was still under the psychological influence of Dr. Webb, and intimidated by Webb in Adams' professional opinion. This finding is not rebutted in the record on the merits of the case, which finding was also adopted by the Board in its July 14, 1995 Order.

44. Moreover this Hearing Examiner previously found in the laches hearing and hereby re-adopts the finding that Dr. Adams testified that Dr. Webb bears a major responsibility for not coming forward to the Board until August of 1992 with her complaint. This finding is not rebutted in the record on the merits of the case, which finding was also adopted by the Board in its July 14, 1995 Order.

45. Dr. Webb was engaging in a sexual relationship with , throughout the period he was treating her as a patient

from a time prior to March 1977, through 1982 or 1983, based upon the clear and convincing proof of record. (Bd. Ex. 10; Bd. Ex. 10A)

46. Dr. Webb is unqualified to practice medicine and surgery in West Virginia.

CONCLUSIONS OF LAW

Accordingly from the review of the testimony taken during this proceeding and the exhibits admitted into the record, and based upon the Hearing Examiner's findings of fact herein, it is, therefore, the opinion of this Hearing Examiner that given all the evidence of record, the following conclusions of law are appropriate and that the following proposed disposition is justified.

1. Respondent Webb at all times relevant herein has held a license to practice medicine and surgery in the State of West Virginia.

2. The West Virginia Board of Medicine (Petitioner) is the state agency charged with the responsibility of licensure and discipline of physicians under West Virginia Code §30-3-1 et. seq. and has jurisdiction over the subject matter and the Respondent.

3. Petitioner Board bears the burden of proving the allegations by clear and convincing evidence.

4. Respondent's Motion to Recuse is denied pursuant to the rules of the Board, 11 CSR 1A, the practice of the Board, and

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Serian v. State, 297 S.E.2d 889, (W.Va. 1982) citing Withrow v. Larkin, 421 U.S. 34, 95 S.Ct. 1456 (1975).

5. Respondent's Motion to Recuse and Stay, insofar as it raises questions as to the constitutionality of the underlying statute governing the West Virginia Board of Medicine, is denied. The provisions of W.Va. Code §30-3-1, et seq. are presumed to be constitutional and the Board as an administrative agency governed thereby, has no authority to rule on the constitutionality of a statute. Lingamfelter v. Brown, 52 S.E.2d 687 (W.Va. 1949); Sims v. County Ct. of Kanawha County, 61 S.E.2d 849 (W.Va. 1950); LaFollette v. City of Fairmont, 76 S.E.2d 572 (W.Va. 1953); Charleston Transit Co. v. Condry, 86 S.E.2d 391 (W.Va. 1955); McMillion v. Stahl, 89 S.E.2d 693 (W.Va. 1955).

6. Former West Virginia Code §30-3-6, which governs Respondent's conduct prior to 1980, provides as follows:

The medical licensing board may refuse to grant a certificate or license to a person... known to indulge in gross immorality... and may suspend or revoke a certificate for like cause.

7. The statutory term "gross immorality" is measured by the standards of the profession at that time. Mingo County Medical Soc'y. v. Simon, 124 W.Va. 493, 20 S.E.2d 807 (1942).

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8. Clear and convincing expert testimony exists in the record, and it is so found that Respondent's conduct prior to 1980, of engaging in a sexual relationship with his patient Ms.

Deskins, constituted gross immorality as measured by the standards of the profession at that time. Mingo County Medical Soc'y v. Simon, supra.

9. West Virginia Code §30-3-14(c) governs Respondents conduct after 1980, and provides:

The board... may discipline a physician licensed... in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:...

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity.

(9) Making a deceptive, untrue or fraudulent representative in the practice of medicine and surgery.

(17) Violating any provisions of this article or a rule or order of the board,...

C. 11 CSR 1A 12.1(e), (j), (r), (s) and (x):

e. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof;

j. Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical... practice, or the ethics of the medical... profession, irrespective of whether or not a patient is injured thereby, or has committed any act contrary to honesty, justice or good morals, whether the same is committed in the course of his or her practice or otherwise and whether committed within or without this State;

r. ...Exercised influence within a patient-physician ...relationship for purpose of engaging a patient in sexual activity;

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s. made deceptive, untrue or fraudulent representations in the practice of medicine...;

x. Engaged in malpractice or failed to practice medicine ...with that level of care, skill and treatment which is recognized by a reasonable, prudent physician ...engaged in the same or a similar specialty as being acceptable under similar conditions and circumstances;

10. Clear and convincing evidence establishes that a physician/patient relationship existed between Dr. Webb and his patient Deskins whenever Dr. Webb prescribed a medicine to her, even after referral of her case had been made to Dr. Hibbard. The weighty testimony of Dr. Hallack in support of this finding is given substantially greater weight than that of Dr. Granacher. To find that a physician/patient relationship does not exist in such case, would mean that any doctor on call who prescribes medications at the emergency room or other facility, or who prescribes medications for the patients of other doctors would thereby not be subject to sanction for his conduct or for other conduct in derogation of the physician/patient relationship.¹ Dr. Hallack's weighty testimony in this regard is also in accordance with the 1997 order of the Board In Re: Jose B. Arce, M.D.; the 1998 Order of the Board In Re: Anil Bhikulal Agarwal, M.D., and the 1990 order West Virginia Board of Medicine v. Govindlal Patel, M.D.

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¹ See Bass v. Verksdle, 671 S.E.2d 476, 487 (Tenn. App. 1984) where, unlike this case, there was uncontradicted proof that the signing of a prescription form for another doctor does not create the relationship of physician and patient.

11. Clear and convincing expert testimony exists in the record, that Respondent's conduct subsequent to 1980, of engaging in a sexual relationship with his patient, constitutes a violation of 30-3-14(c)(8), (9), and (17) and 11 CSR 1A 12.1(e), (j), (r), (s), and (x).

12. Furthermore the determination whether Respondent's alleged conduct was unprofessional and unethical is one which the Board may properly make, and no expert testimony is necessary stating the same, and the Hearing Examiner so finds from the clear and convincing evidence of record. See: Mingo County Medical Society v. Simon,⁴ 20 S.E. 2d 807 (W.Va. 1942); In Re Hawkins, 194 S.E. 2d 540 (N.C. 1973), cert. den. 196 S.E. 2d 275 (1973), cert. den. 414 U.S. 1001, 94 S.Ct. 355 (1973); Petition of Grimm, 635 A. 2d 456 (N.H. 1993); Perez v. Board of Regist. for the Healing Arts, 803 S.W. 2d 160 (Mo. App. 1991); Fleishman v. Bd. of Examiners in Podiatry, 576 A. 2d 1302 (Conn. App. 1990); Craft v. State Bd. of Dental Examiners, 755 P. 2d 1191 (Ariz. App. 1988); Manthey v. Ohio State Medical Board, 521 N.E. 2d 1121 (Ohio App. 1987); Hynes v. Axelrod, 497 N.Y.S. 2d 494 (A.D. 3 Dept. 1986); Sillery v. Board of Medicine, 378 N.W. 2d 570 (Mich. App. 1985); Davidson v. State, 657 P. 2d 810 (Wash. App. 1983); Kundrat v. Com. State Dental Council, 447 A. 2d 355 (Pa. Cmwlth 1982); Ferguson v. Hamrick, 388 So. 2d 981 (Alabama, 1980); See the 1996 Order in West Virginia Board of

⁴ cited in Quesenberry v. Estep, 95 S.E. 2d 832, 845 (W.Va. 1956).

981 (Alabama, 1980); See the 1996 Order in West Virginia Board of Medicine v. Hazem Salah Garada; See the 1998 Order in West Virginia Board of Medicine v. Rahmet Muzaffer, M.D..

13. The practice of medicine is a high calling, a professional license is a high privilege, and the state may attach to its possession conditions "onerous and exacting" [(Barsky v. Board of Regents, 111 N.E.2d 222 (N.Y. 1953), reh. den. 112 N.E.2d 773, aff'd 347 U.S. 442, 74 S.Ct. 650), cited in West Virginia Board of Medicine v. Rahmet Muzaffer, M.D., supra. Nevertheless in accordance with State ex. rel. Kathy Hoover v. Smith, 482 S.E.2d 124, 128 (W.Va. 1996), Dr. Webb was entitled to some form of due process.

14. The inherent object of the underlying statute regulating the practice of medicine is the preservation of the public health (Vest v. Cobb, 76 S.E.2d 885 (W.Va. 1953) citing Dent v. State of West Virginia, 129 U.S. 114, 123 S.Ct. 231 (1889), cited in West Virginia Board of Medicine v. Rahmet Muzaffer, M.D., supra, and in the 1993 revocation Order in West Virginia Board of Medicine v. Magdi Z. Fahmy, M.D., and in the 1994 revocation Order in West Virginia Board of Medicine v. Thomas J. Park, M.D..

15. A variety of disciplinary sanctions may be imposed by the Board under the provisions of former West Virginia Code 30-3-6, and the West Virginia Code §30-30-14(i) and 11 CSR 1A 12.3, when the Board finds a person unqualified to practice medicine in the State of West Virginia after hearing, due to violations of the West

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Virginia Code §30-3-14(c), and the finding that Deleno Webb, M.D., is unqualified to practice medicine in the State of West Virginia has been made.

16. There is a mitigating factor in the case. The law governing Dr. Webb's subject conduct, prior to 1980, at former West Virginia Code §30-3-6, providing that a physician shall not engage in "gross immorality" is a less specific directive, even though measured by the standards of the profession at the time, than the law subsequent to 1980 which provides more specific directives to a physician to not engage in a sexual relationship with a patient. A significant portion of Dr. Webb's sexual relationship with his patient occurred prior to 1980.

17. After a review of all the evidence, the available sanctions, and considering the mitigating factor as set forth above, it is appropriate, essential, lawful and in the public interest under all the circumstances to Revoke the license of Dr. Webb effective the date of entry of the Order but immediately stay such revocation and place the license of Dr. Webb in a probationary status for a period of five (5) years, subject to Dr. Webb's compliance with certain conditions. This sanction and the terms thereof, as distinguished from the sanction of absolute revocation as proposed by counsel for the Board, comports with the sanctions imposed by the Board in prior decisions in In RE: Djalma Aranha Braga, M.D. (March 31, 1999) and Sandra Young Elliott, M.D. (March 29, 1999).

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, the West Virginia Board of Medicine hereby Orders as follows:

1. Dr. Webb's license, No. 9413, is REVOKED effective the date of entry of this Order, but revocation is immediately Stayed, and Dr. Webb's license is placed in a probationary status for a period of five (5) years, subject to Dr. Webb's compliance with all of the following conditions:

a. Dr. Webb shall practice medicine under the supervision of a psychiatrist who shall be so designated by the Board, which person shall file an annual statement with the board commencing January 1, 2000, attesting as to Dr. Webb's health and well being; and

b. Within thirty (30) days of entry of this Order, Dr. Webb will review the American Medical Association Code of Medical Ethics, Current Opinions, and will review the Sexual Misconduct Statement of the West Virginia Board of Medicine adopted in 1993; and

c. Within ninety (90) days of entry of this Order, Dr. Webb will, at his own expense, attend and successfully complete a Board approved ethics course, which ethics course shall include boundary issues with patients; and

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d. Dr. Webb will comply with all provisions of the West Virginia Medical Practice Act and the rules established thereunder; and

e. Dr. Webb will not engage in a sexual relationship with any patient; and

f. Within five (5) days of entry of this Consent Order, Dr. Webb shall provide a copy of this Consent Order to any health care facility where he is employed, where he works, or enjoys privileges of any kind, and to further provide a copy to any employer or health care or medical facility where he seeks to practice medicine during his entire probationary period; and

g. The Respondent be assessed and shall pay in full all costs of the administrative proceedings incurred by the Petitioner.

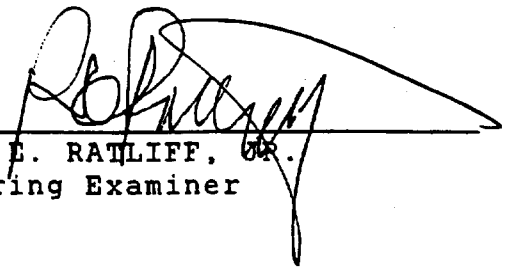
2. Dr. Webb's license shall be reinstated in full, if and when the provisions of this Order have been met in the opinion of the Board.

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The failure of Dr. Webb to comply with the terms of this Order shall constitute grounds for further discipline of

his license to practice medicine and surgery in the State of West Virginia.

Entered this 25 day of June, 1999.


RAY E. RATLIFF, JR.
Hearing Examiner

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WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

DELENO H. WEBB, M.D.,

Respondent.

CERTIFICATE OF SERVICE

I, Ray E. Ratliff, Jr., Hearing Examiner, do hereby certify that service of the Recommended Decision, has been made upon the parties by mailing said true copy thereof to:

Deborah Lewis Rodecker
West Virginia Board of Medicine
101 Dee Drive
Charleston, West Virginia 25311

Rudolph DiTrapano/
Sean P. McGinley
Attorneys at Law
604 Virginia Street, E.
Charleston, WV 25301

in a properly stamped and addressed envelope, postage prepaid, by depositing the same in the United States mail; this the ____ day of June, 1999.



RAY E. RATLIFF, JR.
Hearing Examiner

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